United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2542

United States Court of Appeals

For the Second Circuit

CHRIS-CRAFT INDUSTRIES, INC.,

Plaintiff-Appellant-Cross-Appellee,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE and THE FIRST BOSTON CORPORATION,

Defendants-Appellees-Cross-Appellants.

APPENDIX ON APPEAL FROM FINAL JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

VOLUME VIII — Pages 2683A to 3038A

Counsel of Record Are Listed on Inside of Front Cover

Counsel of Record

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Chris-Craft Industries, Inc.
345 Park Avenue
New York, New York 10022
(212) 644-8000

WEBSTER SHEFFIELD FLEISCHMANN
HITCHCOCK & BROOKFIELD
Attorneys for Bangor Punta Corporation, David W. Wallace and Nicolas M. Salgo
One Rockefeller Plaza
New York, New York 10020
(212) 583-3370

SULLIVAN & CROMWELL
Attorneys for The First Boston Corporation
48 Wall Street
New York, New York 10005
(212) HA 2-8100

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Piper Aircraft Corporation, Howard Piper, Thomas F. Piper and William T. Piper, Jr.
30 Rockefeller Plaza
New York, New York 10020
(212) 541-5800

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NOTE REGARDING THE ORGANIZATION OF THIS APPENDIX ON APPEAL

In accordance with a stipulation entered into between the parties, this Appendix on Appeal is a continuation of the one submitted to the Court on the prior appeal, Docket No. 72-1064. That Appendix consists of six volumes, totalling 2,319 pages. Therefore, this Appendix begins with volume seven (VII) and page 2320A.

Copies of the prior volumes of the Appendix will be made available to the Court in connection with this appeal.

Also, for convenience, the table of contents to the prior volumes of the Appendix is reprinted herein.

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Q And that is the sole basis for your conclusion or your statement or your assumption that there was a threatened merger in the ~~wings~~ winds between Bangor Punta and Piper?

A That is correct.

Q Now, to ~~our~~ your liquidity discount of 60 per cent.

You referred in your testimony, Mr. Rosenkranz, to your Exhibits 11 and 12 in your report, and you said thatyour basis for your arriving at your discounts, or your 60 per cent discounts, was in part based upon these charts; is that correct?

A That is correct.

Q And then you also said you did some studying in tax cases; is that correct?

A Right.

Q Could you tell us, please, what is SMC Investment Corporation?

A SMC Investment Corporation is an investment company that specializes -- it is a closed-end investment fund; in other words, ~~it came to a~~ a closed-end mutual fund.

Q A hedge fund?

A No, it is not a hedge fund. It is a fund which specializes in purchasing investment letter securities. The SMC stands for Shareholders Management Corporation,

and this is a publicly traded company.

Q And Price Capital Corporation?

A It is a similar investment fund.

Q Is that publicly held?

A Yes, it is.

Q That is doing business?

A Yes, it is.

Q Of the companies which you have noted here, as you examined and took your percentage, do you feel that there are any particular companies in the list that you have on 11 and 12 which compare in any way to Piper Aircraft Corporation and the situation you posed as to whether a private investment fund or such as SMC or Price would have purchased in September 19 --

A The companies were not meant to be comparable to Piper. The relevance of these exhibits and this form of analysis was to see the weight, ~~of~~ the market values liquidity per se, and the only difference between the costs and the market values of these securities was a function of their liquidity. So we were using this not as an -- not that these companies were analogus to Piper but rather that the transactions were expressions of the market's value on liquidity.

Q But how did you all of a sudden ~~cease~~ seize on 60 per cent

discount; was that just a judgment ? What methodology did you use to arrive at the 60 per cent?

A Well, we looked at the range of discounts for illiquidity in these letter stock situations, we saw that they went up as high as 50 per cent. We looked at the range of discounts in large block situations, we saw that they went up as high as 30 per cent. We felt that the liquidity constraints here in our judgment were more severe, and consequently we used a number of 60 per cent which we felt was an expression of the severity of the liquidity constraints that were involved.

Now, if you wanted to do this not on the basis of judgment, but on the basis of actual experience, you come out even with a much lower figure, because in fact Piper's financials, audited financials, were not ready until May of 1970.

As a legal matter, in order to have a registered public distribution of Piper, to the extent that that was one market out, you would have been talking about a registration statement in May of 1970, using the audited financials that have just at that point become available with a market price --

Q Excuse me, we are talking about sales to private persons, not a public offering in your illiquidity

discount.

A I understand that. What I am trying to do is indicate why the market should provide this larger discount for illiquidity. I am trying to give an example of the value of an ability to sell on September 5th as opposed to go through a registration process that might have brought you into an entirely different market environment with very, very adverse industrial developments by May of ~~'70~~ 1970.

Q So you feel a 60 per cent discount would be a conservative illiquidity discount in this case; is that correct?

A Well, I wouldn't say whether it is conservative or liberal. It is a discount which --

Q You are satisfied with it?

A -- I think represents our judgment about it and which certainly is -- the adequacy of which is certainly borne out by subsequent event.

Q Let me put it another way, Mr. Rosenkranz. What you are saying, as I understand your testimony, is that some third party would come in here on the basis of Chris-Craft owning 42 per cent and Bangor Punta owning 37 per cent, pay $41 million for Chris-Craft's block, put itself in the position where it had to spend at least another $12 million up to $~~60~~ 53 million, approximately, just to compete on an even

level with Bangor Punta, and if it lost it would suffer a 60 per cent reduction in its investment; is that your testimony?

MR. LIMAN: Objection to the form of the question.

THE COURT: Is that your testimony?

Q Is that your testimony?

A If it lost it would have suffered a very severe --

Q A 60 per cent reduction; that is the illiquidity discount, isn't it?

A Yes, that is right.

Q And the illiquidty discount for the third party would be exactly the same in your opinion as it would be for Chris-Craft?

A That is right, anybody purchasing Chris-Craft's position who lost subsequently, as Chris-Craft did, would have suffered a very, very severe diminution in value.

Q Now, let us get on to your appraisal technique you used here, Mr. Rosenkranz.

By the way, have you ever been involved in any appraisal proceedings under either Pennsylvania law or Delaware law? Either as a lawyer or an investment banker?

A No,sir. I have been involved in an appraisal proceeding under the American Arbitration Association,

however.

Q What kind of an appraisal was involved in that case?

A That was an appraisal of a nursing home in connection with a sale to a public company.

Q You were appraising real estate?

A No, it was a going business, it was a nursing home business.

Q But it was ~~no~~ not the basis of an investment in a nursing home; is that correct, and it was a sale as a going business? I am trying to understand.

A Yes, it was a sale as a going business.

Q Other than that appraisal ~~in~~ for the American Arbitration Association you had no other experience in this field?

A That's correct.

Q Your learning is solely from your examination of, as you said, the cases and the Law Review articles that you read, is that correct?

A Thatis correct.

Q Now, let us get to your appraisal here. You say that, on page 22, "Piper net asset value on September 30, 1969, was $23.01 per share."

Now, how did you arrive at that figure?

A That was the figure reflected on Piper's annual state-

ment for the year ending September 30, 1969.

Q Did you consider whether there were any hidden values in the assets of Piper Aircraft Corporation?

A Yes, sir, I did.

Q Did you find any?

A No.

Q How were inventories carried at Piper?

A They were carried , I believe, at cost.

Q Lower of cost or market, right?

A Right.

Q So those inventories, if sold, would have a higher value, wouldn't they?

A They would have a higher value.

Q And in appraisal approximately --

MR. LIMAN: Could you let the witness answer the question.

MR. RYAN: Excuse me.

A They would have had a higher value. However, there would also have been substantial selling expenses in order to sell those inventories, there would have been general and administrative expenses to keep Piper going as a going business, and there would have been taxes to pay on the profits realized. We looked at this --

THE COURT: When you get through with all of

those deductions, would there have been a higher value than book realized?

THE WITNESS: Well, ultimately they might have realized a --

THE COURT: That was the only question that Mr. Ryan asked you. He wanted to know whether the book figure reflected what you ~~could~~ could liquidate for or get in an appraisal proceeding. And you have given us a long explanation of money to sell inventories.

MR. LIMAN: Your Honor, can we approach the bench?

THE COURT: No, youcannot approach the bench. If there is anything you wish to say, state it in court on the record.

MR. LIMAN: I believe your Honor's admonition to this witness was not fair in the light of the question thatwas put and the answer that he gave.

THE COURT: I will take note of what you say. I think it was entirely fair.

The witness has frequently, as many lawyers do, and sometimes Judges do, amplified his answer to say something that wasn't asked for.

MR. LIMAN: I think the record will show, your Honor, what the question was and the answer was.

THE COURT: Yes, I think it will, and it will show

thatyou were not justified in your comment, in my opinion.

Q Regarding the real estate, you took the depreciated value?

A That is correct.

Q Did you go down and any of the plant --

THE COURT: Just a minut Mr. Ryan. I am not going to let Mr. Liman get away with this.

Are you prepared to dispute or acknowledge that the figure that could have been realized for inventories, bearing in mind all of the expenses that you think would be thrown at it, would be higher, the same or lower?

THE WITNESS: I think the appraisal value of those inventories would have been equal to the price at which they were carried on the books.

THE COURT: What about the realization value?

THE WITNESS: The realization value may have been higher after these expenses, it may have been lower, but I think that the book value represents fair value as of that particular point, because somebody -- if anybody is buying it they want to be compensated for the risk that maybe it is not going to realize the projected prices. Maybe there's an inventory that is not salable. Maybe the reserves are inadequate.

I don't think there is any evidence here that I have

seen that would suggest that these -- the appraisal value of these inventories was any higher than ~~market~~ book value.

THE COURT: All right. Go ahead.

Q So it is your testimony, then, that in appraisal proceedings under Pennsylvania law that the appraiser is limited to book value and he can't ascertain whether there are any hidden assets; is that correct?

A No, that is not my testimony. My testimony --

Q You used depreciated value on the real estate, didn't you? Did you or didn't you?

A I did, yes.

Q All right.

Did you ever go down to look at the plant at Vero Beach?

A No, sir, I didn't.

Q How could you tell whether that plant might be worth more than book value?

A What I was attempting to do here, sir --

Q How can you tell that that plant in Vero Beach is worth only book value, which is the depreciated value, if you didn't go down and look at it?

A I can have an impression of the value of the assets of this company based on its earning power that would indicate to me that these assets are not worth materially

more than book or, more precisely, that as an investment banker looking at what Chris-Craft might have ~~for~~gotten for its position that nobody would step into its shoes on the hypothesis that a court was going to write these assets up to some figure above book value.

Q But you were arriving here, as I understand your report -- perhaps I misunderstand your report. I thought you were trying to arrive at what an appraisal value of these securities would have been under Pennsylvania appraisal statutes. That's not what you just testified to.

A No, and I think, more precisely, what I was doing was giving an investment banking judgment as to what somebody would have paid as in investment to step into Chris-Craft's shoes facing the prospect of an appraisal proceeding.

Q Are you saying now that when you arrived at your figure for what an investor would have to gauge as to what he would have to pay, did you use the appraisal techniques in Pennsylvania? Was that your testimony?

A That was one of the methods that we used, yes.

Q You also, in your report here, Mr. Rosenkranz, said that in your opinion, in an appraisal proceeding, because there was such a thin market, a prospective investor would not have given any consideration to that and, therefore, you didn't give any consideration to the prospective market value in your appraisal? Is that the accepted technique under Pennsylvania appraisal statutes?

A Again, sir, I was not trying to do a statutory Pennsylvania appraisal. I was trying to see, as an

investment banker, what someone would pay to step into Chris-Craft's shoes.

Q You could have reconstructed an estimated market value as of September 5, could you not?

A Yes, but I don't think that would have been relevant from the viewpoint of a potential purchaser of Chris-Craft's position.

Q Let's go to the bottom of Page 23 and Page 24. At the bottom you have the figure which says the United States manufacturing companies ~~owned~~ earned 12.1% on shareholders' equity.

Then I turn you over to Page 24 and you say on the balance:

"We felt that the earnings of Piper should be capitalized to yield 11% in calculating its investment value."

These two percentiles do not relate to each other? They are two different considerations, are they not?

A No, sir. I think they do relate.

Q Isn't your 12.5%, the return on shareholders' equity, and your 11% yield, really just another way of stating what you think the price earnings multiple would be, the relationship between market price and earnings?

A No. If one bought the entire Piper enterprise

at this value, one would be earning 11% on shareholders' equity.

Q A person would be earning 11% or the company would be earning 12.1% on the shareholders' equity?

A A corporation which had no other asset but the Piper enterprise, and which bought that enterprise at $26.54 per share times all the shares outstanding would have been earning 11% on its equity. I am saying that is fair. It is a slightly higher return.

Q Earning 11% on its equity?

A Yes.

Q What you are saying, Mr. Rosenkranz, is that the price, the market price, would be approximately 9.1 times ~~11.~~ earnings.

A That's a ~~reciprical~~ reciprocal of an 11% return on equity.

Q You compare that to Mr. Fitzgerald when he states the yield was 15%. In your report you say this yield compares with a 15% yield used by the Bangor Punta expert in his District Court testimony. Is that statement correct?

A Mr. Fitzgerald used a 15% yield as a required rate of return. I am assuming --

he be using a multiple of approximately 6.7?

A Yes. That's right.

Q What multiple did he use? 13.87?

A He was doing a different -- he was doing a market approach and I am doing an investment approach. I just wanted to indicate to put this yield, this 11% yield, in some kind of perspective.

Q Was it Mr. Fitzgerald who said that a person who would invest his money in an investment such as Piper would expect that his investment would increase at a 15% rate per annum on a compounded basis?

A He was saying that, and he was saying it on the assumption that at some particular point down the road Piper could be sold at a 17 times multiple, I believe, of some future projections of earnings. That's not what we are doing here.

We are looking at Piper as a private company. We are comparing its return on equity with the return on equity earned by all American corporations generally. We have arrived at a 11% figure, which reflects our judgment of the balancing of these factors, namely, that it is --

Q That the price would sell at approximately 9.1 times earnings; isn't that what your 11% says?

A The 11% says that Piper, as a private company,

is worth 9 times earnings.

Q It is still your testimony that your 11% is on the same comparison as Mr. Fitzgerald's 15%; you are both talking about the same thing.

A No. I said specifically we were not talking about the same thing. He was valuing it as a public stock whose price was then discounted to the present. I am valuing it as a private company whose earnings are being capitalized ~~in~~ at a particular multiple.

Q Let's get to your last valuation here.

Let's finish off on your appraisal here.

As I understand it, you arrived at an appraisal value for the assets of $23.01. You give no weight at all to potential market value but then you have a third element, investment value, for which you say $26.54, and then you indicated that you weighted these equally; is that correct? You weighted them equally in your computations?

A No. Actually I gave more weight to investment values.

Q Could you tell us how you could arrive at an average appraisal price in a range of $25 to $28 when your two components are $23.01 and $26.54.

A Because I think there is a range of discretion in all of these. It is reflected in that figure. I think

there is nothing magic about a 11% capitalization rate. Somebody might have used a 10% capitalization rate, possibly a 12% capitalization rate.

Q I understood you arrived at your $25 or $28 range by using your two components of $23.01 and $26.54, and you gave more weight to investment value than asset value; wasn't that your testimony?

A Yes, but it was not done --

Q Let me finish.

How can you then arrive at a price range of $25 to $28?

A Because it builds in the possibility that a Court may have chosen a capitalization rate different than 11% and more favorable. It may have given a 10 times multiple rather than a 9 times multiple.

Q Let's go to your last valuation and your private company valuation. It is your opinion:

"As a private company we believe Piper's value was the investment value of $26.54," which you arrived at in your appraisal where you used a multiple of 9.1 times earnings.

A Correct.

Q In other words, what you are testifying to now as I understand it, is that a third party would come into the

contest between Bangor Punta and Chris-Craft in August and September of 1969, pay 40.5 million dollars for Chris-Craft's 42% interest, be prepared to spend at least another $12,000,000 to get over the 50%, risking a 60% loss if he loses; is that correct?

A That is correct.

Q Then your testimony here is that a private investor would buy the whole company for approximately 42.4 million dollars; is that correct?

A It is correct.

Q One last point.

You testified on your direct examination that Piper had not paid any dividends on its securities after September of 1969; is that correct?

A I believe so.

Q A dividend was paid in September of 1969; isn't that correct?

A I think that is so.

Q And Chris-Craft and Bangor Punta participated as stockholders; is that correct?

A Yes. I believe that is correct.

Q Were there any further dividends paid?

A Not to my knowledge.

Q Have you made any examination into what the earnings

were of Piper Aircraft Corporation in 1970?

A Yes, sir.

Q What were the earnings?

A I don't remember.

Q Did it lose 47¢ a share?

A I believe it did.

Q Excuse me?

A Yes, sir.

Q Do you see what the earnings were in 1971?

A Yes, sir.

Q What were the earnings then?

A In 1971 it lost 79¢ a share.

Q Look at the earnings for 1972.

A Yes. In 1972 I believe the earnings were $1.13. There were ~~four~~ before extraordinary items but there was an extraordinary loss in connection with the flood.

Q It ended up with a loss of $3.03?

A Yes.

Q In your opinion as an investment banker, if you were a director of Piper Aircraft Corporation, in the face of those earnings would you have declared dividends in 1970, 1971 and 1972?

A I may not have, no.

MR. RYAN: I have no further questions.

MR. ARNING: I will be a moment, your Honor.

CROSS-EXAMINATION

BY MR. ARNING:

Q Mr. Rosenkranz, in the course of your professional activity have you ever engaged in a contested tender offer?

A No.

Q Can you cite any instance in which a third party, not one of the contestants, took over the position of one of the contestants and carried on the contest from that point?

A I can't think of any offhand, no.

Q Are you related by blood or marriage to any officer or director of Chris-Craft?

A No, sir.

Q You testified, I believe, you introduced the Chris-Craft account to Oppenheimer.

A Yes. That's correct.

Q By that you mean they came to you individually asking you to be their banker?

A No, sir.

I met Herb Segal, the president of Chris-Craft and through that meeting I was ultimately engaged to provide some financial advisory service to Chris-Craft.

Q Was this a social meeting or professional meeting?

A It was a professional meeting.

Q In what capacity were you acting?

A On behalf of my own company.

Q Explain to me how you happened to coming calling on Mr. Segal, if that was the fact.

A There was a mutual friend of ours who knew that Mr. Segal was contemplating an exchange offer and knew that I was an investment banker, and he suggested that we meet.

Q You called on him and Oppenheimer was retained?

A Yes. Exactly.

MR. ARNING: I have no further questions.

MR. SHIMER: No questions.

REDIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Rosenkranz, do you know whether Piper paid dividends in cyclical periods when its earnings were down in the past?

A Yes, sir. I believe there was a year in the early 1960's when Piper paid substantially more than 100% of its net income as a dividend.

Q Do you know whether in the first quarter of 1970 Piper was projecting income or losses?

A No, sir, I do not.

Q Are you in a position to say, on the facts that were available in November of 1969, how you would have voted in terms of a dividend?

A How I would have voted?

Q If you were a director of Piper.

A For a dividend for what period?

Q You were sitting at a board meeting in November of 1969 to pay a dividend for the next quarter.

A I think I would have voted in favor of the dividend.

Q Do you know that the September dividend that my friend, Mr. Ryan, mentioned, was voted in August of 1969?

A I would have -- yes, sir.

Q You would have assumed it was voted before it was paid?

A Yes.

Q Mr. Ryan asked you some questions about your comparison of Piper as a private company and the value that somebody would have paid for a substantial block in a public company. Do you recall those questions?

A Yes.

Q In your opinion, are private companies conventionally valued at substantially lower values than public companies?

A Yes.

Q Is that one of the top reasons that private companies traditionally go public?

A Exactly.

Q You stated to Mr. Ryan that your object in making your determination of what might be yielded in an appraisal was not to actually sit as an appraiser but to make a determination as you would as an investment banker in September of 1969; am I correct?

A That's correct.

Q Could you in September of 1969 have determined when a merger would be proposed by Bangor Punta?

A No. You would have no way of knowing when a merger would have been proposed.

Q You testified in answer to a question from Mr. Ryan that you did not consider it pertinent to attempt to create a market price as of September, 1969 in terms of predicting an appraisal. Do you recall that?

A That's correct.

5/3 Q Why is that?

A Because since you have no way of knowing when the merger would be called, you have no way of knowing what the market price would be at this time, nor would you be able to, even if you wanted to, guess what the market price would be, be able to know what kind of weight

a Pennsylvania Court might have given a market price in a market as thin as the Philadelphia-Baltimore-Washington Market.

Q You would not have predicted a price on that market of $10 in May of 1970, would you?

A I don't think that it would have been possible to predict that price in September of 1969, no.

Q You said that as an investment banker you came to the conclusion that in September of 1969 a purchaser would have had to anticipate that if there were a merger and he were a dissenting shareholder down the road he might get as little as between $26 and $28 a share; am I correct?

A That's correct.

Q Could you have given a purchaser in September of 1969 an assurance that he would get more?

A No, sir. You could not have.

Q Would you have given Chris-Craft an assurance that it would have gotten more?

A No, sir.

Q Assuming that somebody believed that the appraisal value awarded by a Pennsylvania Court in September of 1969 upon an eventual merger might be in the range that you indicated, when would he have anticipated

getting that money?

A He would have had no anticipation as to when he might get it.

Q From Chris-Craft's point of view, would it have gotten the money on September 5, 1969?

A Of course not.

Q Let's take up a question that Mr. Ryan asked that I could not copy down exactly, but it had a number of predicates about your testimony, and he said, in effect, that would, in your judgment, a purchaser have been willing to pay $57 a share for Chris-Craft's plurality position with Bangor Punta out there -- and these are his exact words -- in order to have to compete with Bangor Punta on an equal basis for the remaining shares? Do you remember a question to that effect?

A Yes.

Q In your opinion, if somebody had bought Chris-Craft block when the lead was either by 10 percentage points or by 5 percentage points, would he have been competing on an equal basis with Bangor Punta?

A No, sir, he would have had a very material advantage, in my judgment.

Q You were also asked questions as to why Chris-Craft stock, when the swing went the other way, after the exchange

offer in fact -- do you recall that?

A Yes, sir.

Q At that time Chris-Craft had 40.6% and Bangor Punta had 44.5% roughly. I ask you, Mr. Rosenkranz, to assume for the moment that Bangor Punta and Chris-Craft bought in competition with each other share for share until they got to the point where because Bangor Punta had this lead it needed 1 share for control and Chris-Craft needed 2. Will you take that as an assumption.

A All right.

Q Assume that Chris-Craft was willing to pay as much as $200 a share for those two shares it needed to avoid being in the minority position and to get into the majority position, or a total of $400, how much could Bangor PUnta afford to bid for one share?

A It obviously could have afforded to outbid Chris-Craft.

Q It could go up to $400 a share at the same cost that it would cost Chris-Craft at $200 a share?

A Yes.

Q Is that right?

A Yes.

Q If you had been advising Chris-Craft in August of 1969 when the percentages stood after the exchange offer,

including the unlawfully acquired shares, at 44.5 to 40.6, would you have told them it was a hopeless battle?

A Yes. I would have had to tell them that.

Q Would you tell them that if they continued to buy all they would do would be to increase their damages?

A Yes, sir.

MR. LIMAN: I have no further questions.

MR. RYAN: I have no further questions.

THE COURT: I wanted to be sure I understood your $58 figure.

Would you tell me again what that $58 figure represents.

THE WITNESS: The $58 represents two things. It represents the price at which we feel that Piper Aircraft Corporation common stock would have been selling at on the New York Stock Exchange in August or September of 1969 absent a contest for control. It also represents a price at which we would regard Chris-Craft's plurality block as readily marketable.

THE COURT: At what price on August 7th, 1969, would Bangor Punta's type of holdings be readily marketable?

THE WITNESS: I have not been asked --

THE COURT: You are an expert. Let me hear what your opinion is, if you have an opinion, or can form ~~conform to~~ an

opinion.

THE WITNESS: I am not sure precisely how many shares --

THE COURT: I will give them to you.

THE WITNESS: All right.

THE COURT: On August 7th Bangor Punta had 732,092 of which 231,002 were tainted shares, or a net of 501,009 shares.

At the same time Chris-Craft had 668,295.

Since I am going to ask you the same question for September 5, I will ask you to put down these figures so you have them before you:

Bangor Punta had a gross of 832,706 minus 231,002, or 601,704; at this time Chris-Craft had 697,495.

What was the dollar value of the Piper shares on each of those occasions on the same basis or on a basis comparable to that at which you valued the Chris-Craft holdings?

MR. LIMAN: Does the question call for the value of Bangor Punta shares exclusive of tainted shares?

THE COURT: We will make it two questions: Inclusive and exclusive.

THE WITNESS: What were the relative percentages at the 732,668, the date of August 7th?

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MR. RYAN: 45%, your Honor, Bangor Punta, and approximately 41%.

MR. LIMAN: I have it computed here. Maybe we can do it this way: Actual Chris-Craft, 40.6% and Bangor Punta had 44.5% . That's on August 7th.

THE COURT: And the net? What would be the net? 31?

THE WITNESS: 30.

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THE COURT: What is the amount of that?

MR. LIMAN: On the net it was 30.5.

THE WITNESS: And then, as of September 5 --

MR. LIMAN: Chris-Craft has 42.4 and Bangor Punta has 50.6, net 36.6.

THE COURT: Give me the dollar value of each of those blocks that Bangor Punta held on a basis comparable to the one at which you valued Chris-Craft.

THE WITNESS: Well, on August 7th, on the assumption that Bangor ~~Punta~~ Punta owned 732,000 shares ~~of~~ of 45% and that Chris-Craft owned 40.6%, we would have regarded Bangor-Punta as a virtual victor in this fight for control, so that its shares would have been worth some substantial control premium over the $58 that we would have concluded that 100 shares was worth.

Nowhere in my testimony did I attempt to fix a

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premium for control here, and I really would not want to do that on an off-the cuff basis like this, but I would say that Bangor Punta's shares at that particular position were worth a premium, a control premium, of over 48%.

THE COURT: I do not think it is fair to ask you to do something which you have not done or you cannot express an opinion on now. Perhaps you can come back after lunch, after you have had a chance to do your arithmetic and your consulting.

I would like to find out what your opinion is as to the dollar value of the Piper shares owned by Bangor Punta in connection with each of the percentages that we have described to you.

THE WITNESS: Okay.

I would like to ask one question, by way of elaboration on this: What assumption are you making about the so-called tainted shares in the second hypotheses?

THE COURT: The same assumptions you made in valuing the Chris-Craft shares.

THE WITNESS: In other words, that those securities are simply held --

THE COURT: I am not saying what your words are. I want the whole thing done on the same assumptions on a comparable basis.

Another question: Have you, at any time, attempted to identify and catalog the methods of the control of Piper sought by Chris-Craft and evaluate dollarwise what those prospective benefits were?

THE WITNESS: Yes, sir. I think that's -- that was the thrust of what this report was trying to do, was to analyze why control was more valuable and to attempt to give some quantitative basis to it.

THE COURT: Is the value of the opportunity to obtain control measured by the value of the use to which it is put?

THE WITNESS: I am not certain I understand the question.

THE COURT: Do you know what an opportunity to obtain control is?

THE WITNESS: Yes, sir.

THE COURT: The opportunity to obtain control is designed to achieve a purpose; is that right?

THE WITNESS: Yes, sir.

THE COURT: What value enhancement or benefit can you identify as being achieved by obtaining control?

THE WITNESS: The identifiable advantages of obtaining control are the very factors that have been discussed here, namely that you can have access to the

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cash flow from your investment; that you can choose the management that you feel is going to produce the greatest ultimate values; that if you change your mind about the desirability of a particular industry you are free to sell your position. There is a whole myriad of elements we took into account in trying to assess the values before and after Chris-Craft had lost this contest.

THE COURT: Have you attempted to put a dollar value on any of these elements, elements as to cash flow, choosing the management, and so forth?

THE WITNESS: The valuation that we presented represents our best judgment as to what all of these control elements are worth.

THE COURT: I will put it another way. I don't think we are meeting on a common ground.

What enhancement of the value of the Chris-Craft holdings, assuming that it's got control, would you visualize and what dollar figure would you put on that enhancement?

THE WITNESS: Well, if I understand this question, the dollar figure that I would put on that enhancement is, roughly the difference between these two appraisal values that we have given here and the elements -- We have not arrived at this figure by trying to add up specific

elements in value, but among the specific values are that Chris-Craft itself could have gotten the remaining 49% through merger, through a package of its own securities, that Chris-Craft would have been able to control the cash flow from this business, not only dividends necessarily but all of the sources of producing cash.

THE COURT: I will try it a third way: What could Chris-Craft accomplish dollarwise by the acquisition of control?

THE WITNESS: It could accomplish bringing in through merger to its own corporate enterprise the cash flow of Piper, which was about ten million dollars pre-tax, five million dollars after tax, on average for the five years prior to the control contest, which is something it could not accomplish in its locked-in minority position, which is of absolute vital importance to an enterprise of Chris-Craft's size.

THE COURT: How would you evaluate that dollarwise bringing in that cash flow?

THE WITNESS: Well, that and the other elements --

THE COURT: Let's talk about that one. How would you evaluate that one? How would you evaluate that element dollarwise as an investment banker?

THE WITNESS: There are so many ramifications.

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Maybe we can do that one after lunch as well.

THE COURT: In your report you set up your Chapter III, Analytical Summary. Then you have A and B under it.

The situation in August of 1969, on Page 9, and then you deal with the situation in August of 1969 until Page 14, when you pick up the situation as of September, 1969; is that right?

THE WITNESS: Yes, sir.

THE COURT: So that all the material between A and B relates to August, 1969?

THE WITNESS: That's right.

THE COURT: Is that correct?

THE WITNESS: Yes, sir.

THE COURT: I read you this sentence for the period of the situation in August of 1969:

"Piper common stock was listed on the New York Stock Exchange. The volume of trading in relation to the float was even greater than for the average company listed on the New York Stock Exchange. This indicates that the market in Piper shares was particularly broad and representative."

Is any part of that true for that period at that time?

THE WITNESS: You are indicating in that statement --

THE COURT: Please, Mr. Rosenkranz. If you cannot answer it simply, I will go on to something else.

THE WITNESS: I am just trying to answer it completely and honestly.

THE COURT: Doesn't it call for an affirmative or a negative? Is any part of it true for August of 1969?

THE WITNESS: We go on to say that we do not feel that the New York Stock exchange market price as of August, 1969, could be a sole indication as to value --

THE COURT: You need not answer the question if you don't want to.

MR. LIMAN: Your Honor, your question relates to the last sentence in Paragraph 2?

THE COURT: No. It relates to the last three sentences of the second full paragraph.

Let me ask you another question:

In your opinion, would the value of the Bangor Punta block be some evidence of what the opportunity to get control was worth?

THE WITNESS: Would the value of Bangor Punta --

THE COURT: That's right.

THE WITNESS: At what particular point in time?

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THE COURT: After they achieved a majority of directors.

THE WITNESS: Yes, sir.

THE COURT: Have you analyzed the Bangor Punta results under the Bangor Punta so-called control from 1969 to date?

THE WITNESS: Yes, I have.

THE COURT: Is there any evidence in there as to what it realized for its opportunity to get control?

THE WITNESS: There is, sir, but we were trying to put ourselves back in a position as of August or September of 1969 and make judgments based on expectations that would have been reasonable at that particular time rather than to take into account all the subsequent things that have happened.

THE COURT: Are you familiar with that line of cases that deals with estimating the future value of a chance?

THE WITNESS: Not specifically, sir.

THE COURT: Are you familiar in any part with the doctrine that when the chance becomes frustrated in the future, that that reacts back as a matter of law, contract law, damage law, to the value that was initially ascribed?

THE WITNESS: No, sir. I am not familiar with

that.

THE COURT: Did you prepare any memorandum on the research that you did on the Pennsylvania appraisal cases?

THE WITNESS: No, sir.

THE COURT: We will take this --

MR. LIMAN: May I ask him one question, not pertaining to what the homework is?

THE COURT: Yes.

BY MR. LIMAN:

Q Mr. Rosenkranz, you hesitated and couldn't answer yes or no when the Court asked you a question a few moments ago. Referring to your section which is headed Analytical Summary, it says, "Situation in August, '69" -- and it continues for several pages, actually it goes back all the way to the end of '68?

A Yes.

Q In fact, you refer to July ranges on that very page that his Honor called to your attention, Page 9?

A Yes.

Q Was it your intention when you said that the volume of trading in relation to the float was even greater than for the average company listed on the New York Stock Exchange referred to the beginning of August?

A No, sir. It was intended as a reference to the whole period, '67, '68 --

THE COURT: Did you write this report?

THE WITNESS: Yes, sir.

THE COURT: Did you read it after you wrote it?

THE WITNESS: Yes.

THE COURT: Did you read those three sentences under that heading?

THE WITNESS: I can see how that can be misleading.

THE COURT: We will recess for lunch. We will reconvene at 2:30 p.m.

[Luncheon recess taken at 1:15 p.m]

AFTERNOON SESSION

2:35 p.m.

R O B E R T R O S E N K R A N Z , resumed.

MR. LIMAN: You had some homework over lunch, Mr. Rosenkranz.

THE WITNESS: I think there were two questions that were posed.

Could I have them read back?

THE COURT: If I recall the record correctly, you testified that your $58 value estimate represents two things: First, the price that would prevail on the New York Stock Exchange ex the contest between the two contending parties; second, the readily marketable price obtainable for Chris-Craft's plurality position to which you would not add a premium because it was still too speculative when it was 41-31 or 42-37. I believe that was what you testified to.

THE WITNESS: I didn't attempt to ~~qualify~~ quantify the premium.

THE COURT: I don't say you did. I am trying now to as accurately as I recall, and the record will bear out what the fact is, to return to where we were when I asked you the specific questions as to taking the same standards and arriving at your $58 estimate for CC's plurality

position, and what would a third party be willing to pay for BP's holdings if BP was behind 41 to 31 and 42-37? That's what I thought I was trying to get at.

THE WITNESS: If BP were behind by 41-31 or 40.6 to 31%, we would have regarded, as we indicated, Chris-Craft as being in an absolutely commanding position with a high probability of having gone forward to win. Accordingly, we would have valued BP's position at 31% of that particular point the same $20 to $23 range that we used in valuing Chris-Craft's position.

t2 pm

COURT: Q How does that relate to the $58 estimate?

A Well, the $58 esimate is an estimate of the value of a plurality position. In the event -- if you are asking how we would evaluate Bangor Punta's position at a 45 per cent to 40.6 per cent?

COURT: Q Yes

A At that particular point we would have regarded Bangor Punta as having virtually achieved victory, we would feel that they would be entitled to a valuation which would reflect their control position. The price they paid for their position is close to $80 a share, and we would regard the range of appropriate valuation for their position to be something in the 58 to $80 range and probably a lot closer to $80 than to $58.

Turning to September 7, Bangor Punta on the assumption that it had 50.6 per cent again we would feel that the contest was over. So that at that particular point their shares are entitled to a full control premium which, ifyou relate that premium to their actual cost of obtaining that position, produces a figure of approximately $80 a share.

As far as the assumption that as of September 7th Chris-Craft had 42.4 per cent to Bangor Punta's 36.6, we would have regarded that position as tantamount to

a victory for Chris-Craft or at least a position such that Chris-Craft had a high degree of probability of going forward and winning, and that Bangor Punta's 36.6 per cent under those circumstances would, in our view again, have been worth something in this 20 to $23 range.

COURT: Q I notice that you said that you would relate Bangor Punta's position to its cost. Did you do that when you calculated your estimate of Chris-Craft's position?

A No, sir, we didn't.

COURT: Q Why didn't you relate Chris-Craft's position to its cost?

A Because the price that Chris-Craft -- that both of these contestants were paying was related to their objectives of obtaining control.

Once one had achieved the objective, the cost becomes a relevant market factor.

COURT: Q Relevant or irrelevant?

A A relevant factor, market factor.

Q If Chris-Craft failed to achieve its objective, so, therefore, the fact that it paid a price that was influenced by its expectation of gaining control didn't seem to us pertinent.

COURT: Q I am just not clear as to why you used one standard in one valuation and you omitted that standard in the other

valuation.

It has an admittedly an inflationary effect in valuing the Bangor Punta position.

A Because Bangor Punta got what it bargained for, got what it paid for. Chris-Craft didn't.

COURT: Q Under the assumption that we have been making, we are taking the positions seriatim and one of those positions is 41-31; another one is 42-37; and the third is 45-42. And then you have 50.1-42. Which is the position in which you factor in the market, the actual market cost?

A I would factor the actual cost in the 50.6 per cent position when the result had been achieved. In other words, when the reason that that premium was paid in fact was applicable.

COURT: Q You mean the premium on the last share; is that what you mean?

A Bangor Punta was paying not very dissimilar prices. Its price to the Piper family was $72, with a contingency. It is open market purchases, some of them were around $80 a share. So there wasn't that much disparity between its average cost and its marginal cost for the extra share.

COURT: Q What was Chris-Craft paying?

A Chris-Craft average cost was, I believe, around

64, $65 a share.

COURT: How high did its actual purchases run in dollar figures? What range did it go to?

A I'm not certain of the answer.

COURT: Now, the second branch of the inquiry had to do with whether you are able to identify in catalog and then quantify or evaluate, whichever way you like best, the purposes of achieving control. Have you been able to do anything on that?

A Yes. I have attempted to value at least in one sense the advantage of achieving control, and the sense in which I valued this, and this was a rough calculation, was on the assumption that control carried with it the power to merge and to acquire the remaining interest through merger, and then I looked at the position that Chris-Craft would have been in holding its 40.6 per cent interest in Piper with the position that it would have --

COURT: No. What you are doing now is making a contrast I am talking about -- this will lead us back to presumably your original report and I am not backtracking on that.

A No, sir, it wouldn't. If you will bear with me a moment. What I am trying to do is quantify for you what Chris-Craft's cash flow would have been from the Piper investment on two assumptions: The first assumption

that it stops at 40.6 per cent, the second assumption that it acquires a hundred per cent of Piper through a merger on certain hypothetical terms.

COURT: Why don't you go to 50 per cent? Why do you stop at 46 per cent?

A At 40.6

COURT: I say why don't you go to 50 per cent? On the assumption that Chris-Craft has achieved 50.1. What are the values to be attributed to the purposes of reaching that point?

A Well --

COURT: I am looking for some concrete evidence of a purpose and its value. That is what I am trying to give you.

COURT: And that purpose is to achieve control. That means 50.1; or whatever the number is to get a majority of the board.

A Okay. The purpose, though, that I -- following this line of reasoning, the purpose of achieving control is ultimately to effect a merger so that a hundred per cent of the Piper earnings and cash flow become the earnings and cash flow of the Chris-Craft enterprise.

Now, if that merger -- and I am trying to contrast two situations -- one, the situation where Chris-Craft has

a hundred per cent, through merger; second, the situation where Chris-Craft has the 40.6 per cent that it acquired for cash. I think if you let me finish, you will see that it wouldn't have made any difference nad I used a 50 per cent starting point or a 40.6 per cent starting point.

What I have assumed here is that Chris-Craft picks up the balance of the Piper shares, which is 953,000 shares, on the exact terms of its original exchange offer, which were $10 a share in cash, one share of a $2convertible preferred, and 6 warrants at $25. And the only reason I pick that assumption is, this the most convenient one around. The exchange offer had been filed, no one knows exactly what the terms of a merger might have been between Chris-Craft and the remaining 49 per cent of Piper, but this seemed as fair an assumption to me as is any.

Now, after that transaction --

COURT: How much is that cost for the 953?

A It would cost $9,530,000 in cash, 953,000 shares of Chris-Craft's $2 preferred, and 5,718,000 warrants to buy Chris-Craft at $25 a share.

COURT: To buy Chris-Craft at what?

A $25 a share.

At the end of this exercise, Piper's -- well, let me backup for a minute. Piper's earning power over the

average of the five years ended September 30, 1969, was approximately $10 million a year pretax, approximately $5 million a year net after taxes.

Now, had Chris-Craft gone forward and merged on the terms -- these hypothetical terms, it would have, as I indicated, paid out $9,530,000 in cash. I have assumed, just for simplicity of computation, a million dollars annual interest cost in connection with that 9,530,000. It is slightly over 10 per cent interest cost. So the $10 million of pretax earnings is reduced to $9 million, subtracting out the interest. The 9 million pretax works out, assuming 50 per cent tax bracket, to $4,500,000 after taxes.

Now, Chris-Craft would have issued 953,000 shares of this $2 preferred. So its annual dividend requirements in connection with that investment, with those shares, would have been approximately 1.9 million.

If you subtract the 1.9 million of preferred dividends that Chris-Craft would have to pay, from the $4-1/2 million of post tax post interest Piper earnings, using the preceding 5-year average, you come up with $2.6 million of cash flow to Chris-Craft net after taxes after interest and after preferred dividends.

Now, that 2.6 million a year of cash flow

compares with what it could actually look forward to getting on the shares -- the 40.6 per cent that was my previous example. There, if you assume that the dividends would continue at the rate of a dollar forty which had been the effective rate, that works out to $973,000 in annual dividends or approximately $900,000 after taxes.

So through a merger on these terms, ~~Crhis~~ Chris-Craft would have increased the cash flow of its enterprise from $900,000 to 2.6 million dollars, or a million-seven annually.

Now, if you would capitalize that million-seven annually, at 9 times earnings, at that same 11 per cent yield that I used in my previous calculation, the value of control over cash flow or the value of this merger to Chris-Craft has a capitalized value of $15.3 million. That is 1.7 million times 9.

I think I may have underestimated that value because I have allowed dividends of $900,000 net after taxes when in fact that dividend, the control over those dividends, were in Bangor Punta's hands and obviously with the benefit of hindsight ~~it~~ Chris-Craft could not count on any such dividends.

But just to try to be conservative about it, I have subtracted the dividends at their full face value.

COURT: So you think that the investment that Chris-

Craft would have made to get control would be enhanced by what?

A Well, I would say that the value of control to Chris-Craft, assuming a merger on these terms, would have been an increase in Chris-Craft's cash flow after taxes, interest and dividend requirements of a minimum of a million seven hundred thousand dollars a year, if you assume that the dividends continue, to a maximum of 2.6 million net after taxes, if you assume that dividends ~~doesn't~~ don't continue, and capitalizing the value of that cash flow at the same 9 times multiple would produce a 15.3 million figure in the first case or 23.4 million figure in the second case.

COURT: Q Now, assume that there is no such merger, what figure do you arrive at, if any?

A I think the principal -- a principal value here -- to answer the question precisely, I looked at this only for the purpose of this exercise; on this particular basis; I am under the assumption that there would have been a merger. That is what both sides had in mind, that is what both sides had contemplated and I assumed that the merger would take place.

COURT: Q If no merger were to take place, then what?

A Well, if no merger were to take place, there are

still a number of elements of value. There is the control over dividend policy, there's the control over management, there's the ability to report earnings at that particular point on the equity basis, and those are not elements which I attempted to quantify.

COURT: Dealing with the last one, I suppose that moving its proportion of the equity earnings into the accounts of Chris-Craft didn't mean that Chris-Craft would be realizing spendable dollars?

A That is correct.

COURT: Nor even that it got something which would be good collateral?

A That is correct.

COURT: It would merely represent an enhancement of the balance sheet?

A Well, of the earnings statement.

COURT: Of the earnings statement. And reflected into the balance sheet through any surplus earnings?

A That is correct.

COURT: Is there any way of assessing the value to that kind of an opportunity?

A Well, I would regard the opportunity to report earnings when you don't have the power to control those earnings as a very limited value.

COURT: Q Is there any way of evaluating the privilege to choose the management in futuro?

A I think it is very hard to quantify these elements separately one at a time, but there are so many clear precedents of companies paying premiums for control of other companies, of control blocks, selling at big premiums over prevailing market prices for a hundred shares, that it just seems clear that there are very, very significant values that the marketplace recognizes for control position.

COURT: Q Aren't they in the same subjective category as the willingness of these contestants to pay ~~a~~ way over fair value for stock in the market?

A Well, some of them are subjective, some of them are objective. I think control over cash flow is a very objective --

COURT: Q But you can't quantify it?

A Well, I have attempted to quanitfy it. In the merger case, following --

COURT: Q I am going to leave aside your merger case because that will just be doubling up on what we are talking about. I understand your ~~point~~ point on merger. I am trying to take these things separately to see if there is in fact an identifiable value to the possibility or probability, whichever way you want to deal with it, of

getting the privilege to name your own president and drive the big limousine and increase the salaries and take home, and all the other ~~prorequisites~~ perrequisites which may or may not be an incident of control.

A Well, I think that there is a quantifiable value to being able to choose the management, but I just am at a loss to be able to quantify that for you in this particular case.

COURT: Now, is there any way of quantifying and evaluating in dollars the matter of ~~divident~~ dividend control, when and how much to pay by way of dividends?

A Yes, I would say --

COURT: Bearing in mind that you are in a cyclical business.

A Well, I would say you could simply capitalize the value of the expected dividends. I mean, in that particular case I would say if Piper had, looking back over five years history, a level of earnings of $3 per share on average and if its current dividend value was $1.40, I would say that the value of the right to pay or not pay those dividends, as you choose, as it suits your own corporate purposes, is quantifiable and I would simply capitalize those dividends. In other words, if Chris-Craft's expectation was to receive$973,000 a year

in dividends and if Bangor Punta acquired the power to frustrate the receipt of those dividends for its own corporate purposes, that Chris-Craft lost a stream of income of $900,000 a year, roughly, after taxes, which, depending on your choice of capitalization rate, and if we are sticking with this nine times idea, that would be over $8 million detriment.

COURT: All right. You haven't mentioned anything about the possibility of increasing earnings in the future. I suppose there is no way to quantify that because there is noway of estimating those possibilities; isn't that so?

A Well, I have been -- no, I think that is correct. I focus primarily on Piper in relation to the earning power that it had demonstrated in the 5 years ended September 30, '69.

COURT: At what point in the normal run of Piper's cycles was Piper in in 1969? What did its cycles measure out to be in year terms?

A I think at the time people would have regarded Piper as in the middle of an up cycle and that was why we asked the United States Trust Company and the various -- to do the analysis that they did, to see what one could reasonably, a neutral economist, could reasonably predict

for Piper based on the economic outlook at that particular point in time.

COURT Q You did get an economic study from Arthur Little?

A Well, that was related to the outlook for -- that was a broader study. It didn't relate specifically.

COURT: Q What did they tell you about the outlook?

A Well, they thought that the outlook for consumer spending and recreational areas was very, very strong but that the outlook for military related spending was relatively weak compared to the rest of the economy.

COURT: Q And they predicted a surge upward or a surge downward in the economy for 1969?

A I don't recall their overall economic prediction. I was concerned more with the specific industry forecast.

COURT: Q '69 was just a little ahead of the time that you became interested in corporate finance; isn't that so?

A Yes, but I had been an economist for several years before that and I was quite --

COURT: Q During the period of time that you taught at Pace?

A Well, I was employed as an economist at Rand Corporation as well.

COURT: Q What years were that?

A That was '67 through the end of '68.

COURT: Q And that had to do with national security and municipals?

A And also municipal finance.

COURT: Q Municipal finance.

I think I have explored the areas that I had in mind.

MR. ARNING: May I ask a clarifying question? Excuse me, do you want to proceed first?

MR. LIMAN: I have no ~~choise~~ choice.

MR. ARNING: Just one question.

BY MR. ARNING:

Q In this $9-1/2 million of cash I believe you referred to 953,000 shares of $2 preferred stock and some warrants in calculating the cash flow. That was only for the balance of the company after Chris-Craft had already achieved a 40 plus per cent position; is that correct?

A That is correct.

Q And doesn't take into account the preceding investment they made in getting to that point?

A No, that is correct. This is just an attempt to see what going forward would have meant to them, what ability to go forward would have meant to them in terms

of marginal income.

MR. ARNING: Thank you.

MR. RYAN: Mr. Liman, just one question.

BY MR. RYAN:

Q If Bangor Punta had refused the offer of securities and insisted upon its statutory rights to a cash appraisal, would your formulation still be correct?

A Well, it wouldn't be correct in precisely this form because Bangor Punta would have gotten an indeterminate amount of cash rather than this package of securities.

Q That would change your numbers, wouldn't it, too?

A Of course.

THE COURT: That would put us back again to the appraisal value of Piper on the day before merger is announced; isn't that so?

THE WITNESS: That is correct.

MR.LIMAN: Do you have one question, Mr. Shimer?

MR. SHIMER: No, Mr. Liman.

MR. ARNING: When we say one, we mean one.

MR. LIMAN: I wouldn't promise that.

BY MR.LIMAN:

Q If Bangor Punta didn't take the package and there was a merger, the way the calculations would work out would depend upon what a Court awarded?

A Yes, that is correct.

Q And that would be down the road when judgment became final?

A That is correct.

Q Now, depending on what the package was worth, had to be constructed to be worth, and what a dissenter might get, your cash flow computation would vary, either up or down, am I right?

A That is right.

Q Cash flow is not the only consideration in seeking control of a company, am I correct?

A That is correct.

Q Now, there's been a lot of testimony about this period of '67, '68, '69 being a conglomerate era, am I correct?

A Yes, sir.

Q And that was an era in which there was premiums for control?

A Yes, sir.

Q And it was an era in which people talked about funny money?

A Yes, sir.

Q You would say we are in a more sober economy today?

A I think we are.

Q Would you say that people are still paying substantial premiums for control today?

A I think people are still paying substantial premiums for control.

Q As --

A I think even more so in fact because we now -- 1968, '67, '69, was a time that was characterized by public companies normally selling at substantial premium over wnat they were worth as private businesses. Today there are a large number of public companies that are selling at substantially less than ~~the~~ their worth as ~~public~~ private businesses, which means that the controlling shareholders or groups today are in if anything a better position to sell at premiums.

Q Mr. Rosenkranz, in your judgment as an investment banker and as an economist, is control something of value?

A Yes, it is.

Q Not just as a market figment?

A No, I think it has very real and practical value.

Q Would you tell me in your opinion, are you prepared to describe Bangor Punta as irrational in committing to pay $80 a share for control?

A No, I am not.

MR. LIMAN: No further questions.

MR. RYAN: No further questions.

MR. LIMAN: Do you have your one question, Mr. Shimer?

MR. SHIMER: No, sir.

THE COURT: Anything else?

MR. RYAN: No more questions.

THE COURT: You may step down.

(Witness excused.)

MR. LIMAN: We have some documentary matters that Mr. Auspitz will handle, your Honor.

MR. AUSPITZ: First, I would like to mark for identification Piper annual reports for the years 1965 through '73, inclusive.

MR. LIMAN: Would you excuse me one moment, your Honor, while Mr. Auspitz ~~handles~~ handles this?

xx (Plaintiff's Exhibit 160 was marked for identification.)

MR. AUSPITZ: I would like to mark the Bangor Punta annual reports for 1969 through '73, inclusive.

xx (Plaintiff's Exhibit 161 was marked for identification.)

MR. AUSPITZ: The Chris-Craft annual reports, 1969 through 1973.

xx

(Plaintiff's Exhibit ~~172~~ 162 was marked for identification.)

MR. AUSPITZ: I offer Exhibits 160 through 162 inclusive in evidence.

MR. ~~AUSLANDER~~ AUSPITZ: Finally, your Honor, yesterday you asked for some statistical computations on the likelihood of Chris-Craft or Bangor Punta obtaining control from certain premises. Mr. Segal has computed those premises and I would simply like to hand those computations up.

These are a matter of applying standard probabilities from, I gather, a table of what is called Normal Distribution and he has worked out these particular percentages on that basis.

MR. LIMAN: We are not offering it in evidence. The facts are all in the last sheet. The targets are all in the record and I thought that the Court would want this as a convenience for the distribution of the stock.

THE COURT: Anything else?

MR. AUSPITZ: No, your Honor.

MR. LIMAN: Chris-Craft rests.

MR. RYAN: I am prepared to proceed, your Honor.

Mr. Lank, please.

A U B R E Y B. L A N K, called by defendants Bangor Punta Corp., David Wallace and Nicholas M. Salgo, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RYAN:

xx (Defendants' Exhibit BH was marked for identification.)

Q Mr. Lank, are you a member of the bar?

A Yes, sir, I am.

Q Of what jurisdiction?

A Of the District of Columbia and State of Delaware.

Q Could you please recount briefly your professional experiences as a member of the bar, your associations?

A I was admitted to the bar in the District of Columbia in 1951. 1952 in Delaware. I became law clerk to the Honorable Richard S. Rodney in '51 and I became associated with Logan Marvin Boggs & Theisen in 1953. I stayed there until 1960.

I left to form my own firm, which is now Theisen ~~Tyson~~, Lank & Mulford.

Q And your offices are in Wilmington, Delaware?

A Yes, sir, they are.

Q In the course of your professional experience, have you had anything to do with appraisal proceedings involving dissenting shareholders under Delaware law?

A Yes, sir, I have.

Q Could you recount for us briefly your experience?

A Between 1956 and 1966 -- I am estimating these dates -- I represented Colonial Realty Corporation in approximately ten appraisal proceedings that were ~~commenced~~ Commenced in Delaware.

I represented the stockholders in the Delaware Racing Association appraisal, I represented the dissenting stockholders in the American Sumatra appraisal, I have been appointed by the Court of Chancellory as appraiser for Industrial Rayon Corporation, Platt Corporation, and last year I was appointed appraiser for the Schenley Industries dissent.

Q Have you had occasion to familiarize yourself with the appraisal procedures which are in existence in the State of Pennsylvania involving dissenting shareholders?

A Yes, sir, I have.

Q Are the procedures in Pennsylvania similar in any way in your opinion to the procedures in the State of Delaware?

A There have --

MR. LIMAN: Objection.

MR. RYAN: There's an objection.

THE COURT: I will take the information and pass upon its significance at alater time.

A Yes, sir, they are similar.

MR. LIMAN: Your Honor, can that go to the qualifications, too,your Honor?

THE COURT: To what?

MR. LIMAN: The qualifications, too, that you will take the testimony subject to the objection?

THE COURT: Yes.

MR. LIMAN: Thank you,

Q Mr. Lank, were you asked by the defendants in this matter to conduct an appraisal using the techniques which are used in the State of Delaware, in the State of Pennsylvania regarding the common stock of Piper Aircraft Corporation on or about September 5, 1969?

A Yes, sir, I was.

Q Could you tell us briefly what steps you took, what investigations you made, in pursuing your efforts to express the opinion.

A The first thing I did was examine the Pennsylvania law compared to Delaware law. I examined the

Pennsylvania cases, compared them to Delaware cases. Then I examined the annual reports of Piper between 1960 and 1969. I obtained through Mr. Arning certain stock information as to trades during ~~the~~ '68, '69 and '70 of Piper stock.

I visited each of the plants of Piper in Lock Haven, Vero Beach and Lakeland.

I talked with the treasurer, I talked with the controller, I talked with the head of marketing and sales. And I even read a book by Mr. Piper, Sr. called Mr. Piper and His Cubs.

I think basically that is in short what I examined.

Q Generally the representatives of Piper Aircraft Corporation which you had your conversation with?

A Yes, sir.

Q Mr. Lank, by using the same techniques that in your opinion are applicable in dissenting shareholders proceedings under the law of the State of Pennsylvania, have you formed an opinion of the appraisal value of Chris-Craft's approximate 42 per cent stock interest in Piper Aircraft Corporation on or about September 5, 1969, assuming that at such time Bangor Punta owned approximately 51 per cent of all outstanding Piper shares and the balance of the

Piper shares, approximately 9 per cent, were not owned by either Bangor Punta or Chris-Craft.

A Yes, sir, I have.

Q Would you tell us what your opinion is?

A $49.32 a share.

Q That is for each Piper share?

A Yes, sir.

Q Mr. Lank ~~Lang~~, by using the same techniques used in your opinion in dissenting shareholder proceedings under the law of the State of Pennsylvania, have you formed an opinion of the appraisal value of Chris Craft's approximate 42 per cent stock interest in Piper Aircraft Corporation on or about September 5, 1969, assuming that Bangor Punta Corporation at such time owned approximately 37 per cent of all Piper shares and the balance of the Piper shares, approximately 21 per cent, were not owned by either Bangor Punta or Chris-Craft?

A Yes, sir, I have.

Q Could you tell us, please, what your opinion is?

A $49.32 a share.

Q Would your conclusion change or be the same if you assumed that on September 5, 1969, Chris-Craft owned 41 per cent of the outstanding Piper Aircraft shares and Bangor Punta owned approximately 31 per cent of the

outstanding Piper shares, and the balance were not owned by either Bangor Punta or Chris Craft?

A No, sir. With still the same $49.32 a share.

Q There would be no difference in the value?

A No difference.

Q I show you Defendants' Exhibit BH for identification and is this a copy of your report on your appraisal?

A Yes, sir, it is.

MR. LIMAN: Are you offering it?

MR. RYAN: Not yet.

Q Mr. Lank, could you, by using your report to refresh your recollection, if necessary, please recount to the Court how you arrived at your conclusions?

A All right, sir.

Q As briefly as you can.

A First of all, the Pennsylvania law with regard to either a dissent from an effort by the corporation to change its voting -- by changing cumulative voting, rather, provides a method of determining what they call fair value for each share of the dissenters' stock.

I examined the Pennsylvania cases and came to the conclusion that basically what the Pennsylvania cases were concerned with were the same elements of value which we use in Delaware, namely asset value, investment value, and

market value.

I read the applicable Pennsylvania cases to try to determine what the Courts looked at in each category. I will have to confess they were not much help and I had to rely, as the Pennsylvania cases do, incidentally, to a great extent on what the Delaware law is.

Using that as a background, I tried to find a little something about the general aviation business and what Piper's position was in that business. I found, for example, that the three major competitors in the general aviation business were Piper, Cessna and Beech.

Piper, up until about, I would say, 1950, was far in advance of either of its two competitors in the single engine plane market. Commencing in the late '50s and early '60s, oh, well, late '50s, we will say, they lost that advantage they had in the single plane market. I suppose, or I have been told, rather, that because of Mr. Piper's penchant for perfection, if he couldn't build a single engine plane to sell for 4,000 or 5,000 dollars that was absolutely perfect, he wasn't going to build a single engine plane that cost 4,000 or $5,000.

Therefore, gradually their price kept increasing in the single engine plane market. They -- Cessna competed, undercut them, undersold them, built up a larger share of

the single engine plane market, larger distribution, larger number of overall sales.

This continued, and during this period of time Piper, of course, got ~~on~~ into the twin engine plane market, where tney did compete and they competed effectively with Cessna and with Beech.

I read Mr. Fitzgerald's testimony which he gave here some time ago concerning the future of the general aviation business. I think he painted a very rosy picture as of 1971, and I think the same picture was applicable in 1969.

Now, then I explored the three elements of value. No. 1, market value, No. 2, investment value, and/or earnings value as you want to determine it, and three, asset value.

In determining market value, I did several things. I examined the market for Piper stock in 1968, I examined it in 1969 and in my opinion as an appraiser I wouldn't have taken into account the market value of the stock as of September 5, 1969, and for two reasons:

No. 1, the price at $62 a share was reflected in the tender offer or the counter offers of both Bangor Punta and Chris-Craft, and secondly, the market was almost non-existent at that time on the Philadelphia-Baltimore-Washington exchange.

3/1 pm
ris-Craft
. Piper

So I looked back over the market data that I had and I tried to find out when the market was affected by the quest for control by Chris-Craft. I found out that they made an announcement of their intention to control on January 23. I looked at the market price on January 22nd, 1969.

I then averaged the market price even in December of 1968 to see if that really made any difference, if there was a real difference between the two, and there was not.

As a matter of fact, if you averaged the market price of 1968 in December you would get a slightly higher figure, about $53.25. So I thought the price that was not affected in any way by the control factors or tender offers was the price as of June 22nd, 1969, $52.50. I believe that is in accord with the Pennsylvania law where they say that the price is not to be affected by the announcement of the plans for merger and/or the amendment to the ~~corporation~~ charter to dispose of cumulative voting.

The second value which I used was investment ~~banking~~ value. Delaware law and a recent Pennsylvania case seems to intimate that when you are calculating investment and/or earning value you do it on the basis of averaging the last five years. So I took the last five years earnings of Piper, '65 through '69, and arrived at an average of

$3.03 for that five-year period.

The most difficult part in the appraisal process, or one of the most difficult parts of the appraisal process, is determining a rate of capitalization for these earnings.

In the Delaware cases -- and I will have to limit myself to that because it is so difficult to determine what the Court actually did in the Pennsylvania cases, the Pennsylvania cases other than Watt & Shand, we have run the ~~gamit~~ gamut from the old days of the appraisal when Mr. Dewing on the financial policy of corporations was the Bible to the present time where we are now finally using a multiple of price to earnings, either the Standard & Poor's price earnings average, or the industry average. I examined both of those.

I examined the ~~industries~~ industry Cessna and Beech. I did not use Cessna-Beech for a couple of reasons. There was one main reason: They are both in the general aviation business but there their similarity ends.

Cessna is about 47% in other types of business. They are in a fluid control manufacturing business; they do a great deal of work for the ~~Military~~ military. Beech also does a great deal of work for the ~~Military~~ military. I believe I have them listed here. Forty-three percent of Cessna's sales are not in general aviation sales and 22.8% of Beech's

sales were not.

So I was left then, I thought, with really one indicator. I could have used, as Delaware cases have done, an average of the two competitors and I would have arrived at a price earnings ratio of somewhere around 18. I think I put that in here. A little over 18.

I then examined --

THE COURT: What were the components of that figure wherein you arrived at 18? I don't see that in here.

THE WITNESS: Look at Page 12. Cessna's five-year average is 12.4 and Beech is ~~2.54~~ 25.4. If you add them together you get 37.8, and you divide that by 2.

THE COURT: I misunderstood you. I thought you were taking the price earnings ratio of Chris-Craft and Bangor Punta.

THE WITNESS: No, no.

THE COURT: You are talking about the two airplane companies?

THE WITNESS: Yes.

We would get 18.9. I was not happy with that because I don't think the two companies are really comparable. Much less than 1% of Piper sales are to the Military. They are solely in the general aviation business.

So then I thought the next fairest way to do it

would be to take the STandard & Poor's 425 Industrial Average over a five-year period and see what that arrived at. I did, and I took '65, '66, '67 and '68 on Page 13, and I arrived at a multiplier of 17.32. I adopted that ratio to my earnings of $3.03 and arrived at $52.48. That is my investment value.

The most difficult part of this appraisal proceeding was trying to determine what net asset value was, mainly because Piper had never had an appraisal of any of its assets. They did have several things though that did help me.

I found out, for example, in 1972 they mortgaged all their plant equipment for $22,000,000. At that time book value was about 15.3 million.

I also found out that the assessed value of the Vero Beach property was something in excess of four and a half million dollars. It had a book value of a little over 2.

I examined the reproduction cost for insurance purposes as of September 5, 1969, and they came up with a total plant and equipment value of some fourteen million dollars over the original cost value per the balance sheet.

I have, as I said, visited all these plants. I went through them. I talked with the plant managers.

The plants are well maintained. They are clean, painted, and they appeared to be, to me, well ~~operating~~ operated. I took an arbitrary figure, ~~and middle is~~ an admitted arbitrary one, of increasing the book value of the plant and equipment by its cost, and that resulted in an increase of about $9,000,000.

Now there was one or two other adjustments that I had to make.

On the 1969 statement there was an item called Finished Airplanes and Service Parts. They had a book value ~~per plane~~ of $12,410,000. These planes, I will say, 95% of these planes, were already purchased by customers, and all that had to be done was for the customer to come and pick them up and they were finished.

Part of the duty of an appraiser in finding a net asset value is to ascertain what is its going concern value.

The Pennsylvania cases say assets shall be appraised on a going concern value. Since these planes were ready to go, I arrived at a fair market value for those planes of $15,270,000 based upon the percentage of sales and the cost of sales for the year ending September 30th, 1969. In other words, I felt that as of that date those planes could have been sold for $15,270,000.

One other adjustment had to be made. They had

assets in Miscellaneous Assets of 10,734 shares of common stock of Narco Scientific Corporation with a book value of $4189, and the fair market value on September 5 was $448,145.

So I added to my other assets $443,956, which was the difference between $4179 and the fair market of $448,145. My total adjustments then to book value were ~~$136,417.96~~ $13,641,796 or $9.27 a share.

Q Excuse me.

A $8.29 a share, making a net asset value of $31.31.

The next process a Pennsylvania appraiser has to do is to weigh the various elements he finds of value. The Delaware cases, I think, have uniformly held that the two most important elements of value in an appraisal action are earnings and market.

The Pennsylvania cases which I have read put a great weight on earnings. Our cases have ~~ran~~ run the gambit of weighing market value of earnings from a low of zero, where there was no market, to a high of 50%. I have chosen -- and I don't think arbitrarily -- a weight of 45% to be applied to market value.

The next element was weighing earnings, and I have chosen a weight of 40% on earnings because I felt that the earnings were, with market value, ~~with~~ the two ways in which

an investor could ~~possible~~ possibly recoup his value in the concern. I therefore place a weight of 40% on earnings.

Asset value garners the least weight, and more so where I was not at all satisfied with my valuation of assets. I would have been better satisfied had I had appraisals of each one of the plants and the land, but I did not, and, therefore, I assigned the least value to assets of 15%, and after these weights are applied to the various values you come up with an appraisal value of $49.32 as of September 5, 1969.

Q That, in your opinion, would be the value, the appraised value, of Piper shares on September 5, 1969 if the techniques used in Pennsylvania were applied?

A Yes, sir. That's my opinion.

MR. RYAN: No further questions, your Honor.

MR. LIMAN: Your Honor, do you have any questions before I start?

THE COURT: My questions will follow yours. Please proceed.

***

CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Lank, are you a member of the Pennsylvania Bar?

A No, sir, I am not.

Q Have you ever participated in any Pennsylvania

appraisal proceedings?

A No, sir, I have not.

Q Did you ever have any occasion to familiarize yourself with Pennsylvania procedure before you were engaged for this responsibility?

A I did familiarize myself with procedure because I am interested in appraising proceedings and I suppose generally I know a little bit about a lot of law; in particular, with regard to appraisals.

Q When were you asked to undertake this assignment?

A Do you want the exact date?

Q No. It is not necessary. Give me an approximation.

A I think it was sometime in February of 1974.

Q You testified that you spoke to various officials at Piper Aircraft Corporation.

A Yes, sir.

Q Who arranged for you to visit the plants and speak to the people?

A Mr. Martin.

Q Mr. Martin of Bangor Punta?

A Yes.

Q Did you find the Piper people cooperative with you?

A Yes, sir, they were.

Q You got what information you requested, I presume?

A Yes, sir.

Q Did you also speak to other Bangor ~~Punta~~ Punta officials besides Mr. Martin?

A No, sir. Until yesterday I didn't know any other officials at Bangor Punta.

Q Did you have any knowledge of the light aircraft industry before you undertook this assignment?

A Well, yes and no. I have been a passenger -- I have about 200 hours as a passenger in Piper Commanche, both single-engine and twin-engine, and I guess I have flown all over the United States and Mexico. I don't fly myself. That's my only experience with general aviation.

Q I drive but that does not make me an expert in the automobile industry.

Do you have any knowledge of the aircraft industry other than what you gained in connection with this case?

A No, sir.

Q You used the term "appraisal value" in your report and in your testimony.

A Yes.

Q In fact, you have had two reports on this matter, have you not?

A Well, I have had two because I had to amend one because --

Q You made a mistake?

A We made two mistakes.

Q Is the term "appraisal value" used in the Pennsylvania statute?

A No. The term used in the Pennsylvania statute is "fair value."

Q Is the term "appraisal value" used in your Delaware statutes?

A No, sir, it is not.

Q There the term used is "value"?

A There the term used is "value."

Q You referred to the Watt & Shand decision; am I correct?

A Yes.

Q When was that decision? Before 1969?

A No, sir. That was 1973.

Q Is it fair to say that there were Pennsylvania decisions on appraisal before 1973?

A There were a few, yes, sir.

Q In fact, you read the Austin case?

A Yes.

Q You were familiar with the fact that the Pennsylvania Court in that case cited New York cases?

A Yes. That's right.

Q As a person who has had a general interest in the area of appraisals, I take it that you were aware that there were differences between the approach of the New York Courts towards appraisals and the Delaware Courts towards appraisals.

A Yes, sir. Very much so.

Q Is it your view now that in 1973 Watt & Shand has resolved that issue of whether Pennsylvania was going to follow New York or follow Delaware?

A Well, I don't know whether -- I would say that the Supreme Court of Pennsylvania, as of 1973, certainly followed Delaware. Whether or not -- I think if the same elements that were in Watt & Shand were put to them probably in 1969 they would have probably have done the same thing. That's my opinion.

/4 Q You have made some predictions as to the outcome of cases that have not come to pass. All of us have done that. That is an occupational hazard of our profession.

A I would think so.

Q In any event, in 1969, forgetting about looking forward, you could not have said with the conviction ~~that~~ what you say now that Pennsylvania was going to follow the Delaware standard as opposed to the New York standard; am I correct?

A I think that's a fair statement.

Q You are not a securities analyst; am I correct?

A I am not.

Q When you have participated in an appraisal proceeding you have participated in two capacities, either as an attorney for one of the parties --

A Dissenters mainly. I have never represented the corporation.

Q You have also participated in the ~~quais~~ quasi-judicial ~~capacity of being an appraiser~~. STET

A Yes.

Q And in that capacity you hear testimony and receive evidence from the parties; am I correct?

A That's true.

Q Am I correct that you have read the Delaware statute; you know it by rote?

A I don't know if I know it by rote, but I know it.

Q The Pennsylvania statute you read now, you know that one, also?

A Yes.

Q You fixed September 5 as the date as of which your appraisal would speak?

A I fixed September 5, although the Pennsylvania statute says the day before the vote. The Delaware statute

says the effective date of merger. The date of September 5 was requested of me. That was the date that I was asked to do it on, as of.

Q You didn't make a judgment yourself as to what the appropriate date was?

A No, I did not.

Q Under the Pennsylvania statute for September 5 to be the date as of which an appraisal would speak, the vote of the shareholders would have to be on September 6?

A Yes, sir.

Q And there would have had to be a proposal of merger tendered by September 5 and September 6; am I correct?

A Yes.

Q Am I correct that you were aware that there was no such vote of shareholders on September 6th?

A You are right.

Q There was no such vote of shareholders on September 5?

A Yes.

Q You have done an appraisal only on the assumption that the vote of shareholders took place on September 6th? Am I correct?

A I have done the appraisal on the basis that if someone asked me as an appraiser what the value of Piper

stock was on September 5, 1969, this is my opinion.

Q Under that statute what you are saying is that would mean that the vote was on September 6th.

A That's correct, sir.

Q Have you made any efforts to compute what the value would be if the vote of shareholders had been in May of 1970?

A No, sir, I have not.

Q May of 1971?

A No, sir.

Q Or today?

A No, sir.

Q You are aware, are you not, of the Second Circuit decision in this case?

A I have read the Second Circuit decision, yes, sir.

Q Did you read language in that decision to the effect:

"The measure of damages shall be the reduction in the appraisal value of CCI's Piper holdings attributable to BPC's taking a majority position and reducing CCI to a minority position and thus being able to compel a merger at any time?"

You read that language?

A I read it.

Q Is it fair to say that you proceeded on the assumption

that the merger had actually been consummated?

A I didn't have any assumption other than the fact that I was asked to appraise the stock as of September 5, what was the appraised value on that day, and however you want to put it, that's what I came up with.

Q Under the provisions that you are familiar with, either Delaware or Pennsylvania, is there any occasion on which you would have to determine a value as an appraiser other than if certain action had been taken by the corporation which gave rise to an ~~appraiser~~ appraisal?

A Prior to that time, you are right.

Q So you would agree with me that the underlying premise of your work -- I am not asking you whether you made that premise -- is that the merger was consummated.

MR. ARNING: Objection. That has been asked and answered six times.

MR. LIMAN: He has not answered it, your Honor.

THE COURT: You may answer it again.

A The premise upon which I did the appraisal, as I said before, was, in my opinion, as an appraiser, what was the value of the Piper stock on September 5, 1969? I don't care what happened before or after.

Q You are an appraiser in the Schenley proceeding?

A Yes.

Q Since you are sitting on that case I am not going to inquire into your mental processees or matters that might embarrass you, but I would like to pose some questions based just on the public record.

A All right.

Q If you feel that any of the questions are out of order, please tell me.

You are aware, am I correct, that Glen Alden acquired control of Schenley in 1968?

A Yes, sir.

Q Is it fair to say that the merger which has given rise to the appraisal took place in 1971?

A That's correct. June, I believe.

Q June of 1971.

Is it fair to say that your assignment is to fix the value of the dissenting shareholders' stock as of the date of the consummation of the merger in 1971?

A That's right.

Q It is not to fix the value as of the date in 1968 when Glen Alden got control?

A That is one of the contentions of one of the parties that the date should not be '71 but should be '68.

Q Your statute says '71.

A Our statute says '71.

Q When were you appointed?

A I was appointed in -- I believe it was May 1st, 1973.

Q That's approximately five years after Glen Alden got control?

A Yes, sir. That case had been in the Supreme Court twice.

Q There still has not been any resolution?

A No, sir.

Q Have proceedings been held before you?

A I hope it will all be resolved by the middle of June, at the outside.

Q Is it fair to say that the case was actually up to your Court before it was assigned to you, up to the Supreme Court in Delaware?

A Two times.

Q There was an effort to enjoin that merger; am I correct?

A That's correct.

Q At that time the objection was made that the price that was being offered to the shareholders in the form of paper was not equitable?

A That's right.

Q And the Supreme Court of Delaware compared the

package that was being offered to those shareholders to the market price of Schenley before the merger was announced; am I correct?

A That's what they did.

Q That was in 1971?

A Yes.

Q They didn't compare it to the price that Schenley was selling at when control was taken by Glen Alden in 1968?

A That is correct.

Q The price in 1968 was substantially higher. In fact, the price in 1968 was over $50 a share, wasn't it?

A The whole issue, Mr. Liman, is whether or not the Court is to consider the price, what was paid to Mr. Rosensteil for his effective control of Schenley, or whether you fix another price in 1971. That is the issue which I have to decide.

Q I asked you about what the Supreme Court decided.

A I don't know what the Court will decide.

Q It looked at the 1971 price?

A It said that looking at the 1971 price the package that was offered for the Schenley shares is fair.

Q It didn't look at that much higher 1968 price?

A That's right.

Q Would you describe the process of appraisal in Delaware as a precise science?

A No. I don't think it is a precise science.

Q Does it really involve a question of judgment?

A Yes, it does.

Q The judgment of reasonable people can differ?

A Yes.

Q In fact, it has differed from appraisers to the Chancery Court to the Supreme Court in the same cases; am I correct?

A Yes, sir. I don't think the Supreme Court has ever overturned the Court of Chancery in an appraisal action.

Q You participated in the Delaware Racing Commission case; am I correct?

A Yes.

Q Do you recall that in that case the corporation proposed a fair value of $1932 a share?

A Yes, sir.

Q And you, applying the same standard, asked for $7949?

A Yes, sir, I did.

Q In fact, $7949.20, right down to the last decimal.

A You are probably right.

Q And the appraiser appointed by the Court, applying

those principles, came up with a figure of $3472.90; am I correct?

A I don't know the exact figures. That sounds about right.

Q And Chancellor Marvel disagreed with the appraiser?

A Yes, sir.

Q Disagreed with your position?

A Yes, sir.

Q And he came up with the figure of $2321.30?

A I believe that's correct.

Q There have been other cases involving this kind of discrepancy in Delaware; am I correct?

A Yes, sir.

Q Is it fair to say that you find your assignment as an appraiser a very difficult one?

A Yes.

Q Would you agree that the term "fair value" in the Pennsylvania statute is "an elastic one and subject to an infinite number of variations in definition and in the component elements that combine to establish the 'fair value' of anything?"

A I would certainly agree with that.

Q Do you know where that quote came from?

A It sounds like one of the Pennsylvania cases.

Q Was it the leading Pennsylvania case in 1969, the Austin case?

A It may have been.

Q Do you remember in Austin, Judge Allesandroni's decision reported in the District and County reports, 89 District and County Report 57, 1953, the following:

"No mathematical computation or ~~arithmatic~~ arithmetic value can be ascribed to any particular element that when added to others may properly be said to constitute the fair value of any given security."

A I think he probably said that.

Q Do you agree, with respect to the appraisal process, that inevitably the procedure involves delay and uncertainty with expenses which may cut into a shareholder's recovery?

A Yes. I believe that.

Q Do you believe that the valuation process itself may involve a significant financial sacrifice to the shareholder, notwithstanding the attention which Courts have given to the matter?

A That's why Pennsylvania amended their statute to allow the cost to be recovered and interest to be recovered.

Q Do you agree that the appraisal process will tend

to produce conservative results where the values are speculative and the majority power to pick the time in which to trigger the appraisal may encourage them to move when full values may be temporarily obscured?

A No. I don't believe so.

Q Have you read the Vorenberg article?

A I have, many times.

Q Do you disagree with that observation?

A Yes, because I have had the same thing tried on me as an appraiser, and I think to counteract that very suggestion is that you eliminate a value that you think is artificial or manufactured by the control corporation or you reconstruct a market value which more nearly reflects the actual market.

Our cases have done that time and time again.

Q I am not talking about the market value. What about earnings?

A Very easily, Mr. ~~Lyman~~ Liman. What I think the Court could do, what I would do in a case like that, if I was faced with maybe one or two bad years after a series of good years I would increase the area -- instead of five years maybe I would make it eight or nine or ten, because it is not fair to a stockholder.

Q Are there any cases in Pennsylvania or Delaware

that you can point to where they did that?

A I can point to a Delaware case where they did that.

Q Which one?

A Let me see if I can find it for you.

Q Is there one case you have in mind?

A In the case I am thinking about the corporation tried to say that the only relevant earnings were those earnings of the last two or three years and they were not -- there were no earnings. There were losses. The Court said you can't do that.

Q Are there any cases that you can think of in which there were five years of earnings and where the Court in Delaware rejected the use of those earnings on the ground that it had been a depressed period?

A We rejected it on the ground of being depressed? I don't know where they have used five years' earnings and have rejected one or more years. I know cases where there have been two or three bad years and they have extended that period of earnings to maybe seven, eight, nine, even ten years.

Q Would you cite the cases you have in mind where they extended it to seven, eight, nine, ten years, whatever the figures are you have?

A [Pause.] Well, here is Adams vs. R. C. Williams,

158 Atlantic 797. The Court used eleven years.

THE COURT: Who was the judge?

THE WITNESS: Your Honor, the judge, I think, was Chancellor Seitz.

THE COURT: What year was that opinion?

THE WITNESS: 1960, sir.

The reason he did it -- he said why -- was because out of those eleven years there were four years of losses.

Q Didn't the Court in that case find that whether you used five years or eleven years there were losses and there was no earning value?

A As it ended up, it didn't make any difference. You asked me for a case where the Court had used more than five years or had tried to average out these earnings.

Q The Court concluded in that case there was no earning value at all; am I correct?

A I think you are absolutely right.

Q Do you say in your report that you prepared with care here:

"Delaware has for many years as the Supreme Court in Watt & Shand did used the somewhat arbitrary calculation of averaging the previous five-year earnings"? Is that statement true?

A I think that statement is generally true, yes.

25 PGR Lank - cross

Q Would it be fair to say that if we were in a poor economy over a period of several years the stock is likely to be valued at less than if we were in a good period?

A I think that's likely. That's likely.

Q In fact, you have no doubt in your mind that in 1974, given the climate, the way in which multiples are appearing in the stock exchange, that a stock was likely to be valued at substantially less today by a Delaware Court than it would have been in 1969?

A I think that's generally true.

Q Would you agree, then, that the timing of a merger can effect the value that will have to be given to the minority shareholders?

A It can effect the value if -- I am up here --

Q I don't mean artificially, sir. I don't mean somebody manipulating his earnings downward. Can it effect the value --

A If you choose the bottom of the business cycle to go into a merger, sure. It is going to effect it somewhat.

What I would do if I were the appraiser, I would extend those earnings back.

Q Do you know whether any Pennsylvania cases extended it back?

A No. I do not know of any Pennsylvania cases.

Q You said in your report that you set out to construct a market price for Piper in September of 1969; am I correct?

A I set out to take one that I thought was not affected by the offers.

Q What you did, you took the price that Piper was selling at just prior to Chris-Craft's tender offer?

A Yes, sir.

Q That was how many months before September?

A About nine months, I guess; eight months.

Q Do you normally, sitting as an appraiser, get some advice on market prices when you are not taking something out of the New York Times but attempting to make a prediction?

A Normally one of the big elements of an appraisal proceeding is whether or not the appraiser should be concerned with the price of the day prior to the announcement of the proposed merger or whether he should take the price on the effective date of merger. That always is an issue.

Q I did not make myself clear. I apologize.

Do you undertake the determination of market price in the first instance getting help from the parties or do you get help f[illegible] experts?

A From experts.

Q ~~From~~ What experts do you rely upon in reaching your judgment as to what the market price would have been?

A They bring a securities analyst down who has made a study of market price of the stock over a period of years who suggests a date which I should take as the market price.

t4 pm

Q Now, did you use a security analyst here to make that price?

A No, sir.

Q What consideration or study did you do of the conditions of the market subsequent to January 22, 1969, to arrive at your September market price?

A Well, the only study I made was that the contest, you know, started in May and the tender offer was made in January. That immediately shot the price of the stock up. It wasn't a realistic price, I didn't think, in my opinion.

Q I understand that you discounted the higher price but you did accept the $52 price, am I correct?

A Yes, because it was practically the same as it was all through December when nothing was happening.

Q Would you have used, if you had been asked to make the appraisal by my friend, Mr. Ryan, as of January 15, 1970, would you still have used that January 22, 1969 market price?

A Maybe I would, maybe I wouldn't. I don't know.

Q If you had to make it in 1971, would you still have used that price?

A Probably not.

Q In deciding whether or not the January 22nd market price was obsolete or not, are there some consider-

ations that you would normally take into account?

A Sure.

Q I amnot trying to find fault with you, I just want to find out what you --

A I understand.

Q All right.

Now, in attempting to determine whether or not a price at which a stock prevailed in the past would be the price at which it would prevail at a current date, what factors do you normally look at?

A To determine whether or not the market price would be the same as of the date of the merger or the date of the vote, you mean?

Q Yes, to determine whether or not, for example, a January price would be really the price nine months later. What do you normally look at?

A I look at what happened to the market, really. What happened to the stock prices, what happened to the indexes -- indices, rather.

Q You look at the indices?

A Right.

Q Did you look at them here?

A Sure, yes.

Q After looking at the indices, you concluded

that the January 1969 price of Piper was a good barometer for the price on September 5, 1969, am I correct?

A I thought so, yes.

Q What indices did you look at in particular?

A Standard & Poors. That's all I was really interested in.

Q Did the Standard & Poors price remain the same between January and September?

A I think it went down, as I recall.

Q Was there some reason why you concluded that Piper wouldn't follow Standard & Poors down?

A Well, I had two choices as I saw it, Mr. Liman. I either used the September 4th or 5th price or I used the price before any tender offer was made. That's all.

Q Or --

A Or attempted to reconstruct market prices itself.

Q Didn't you reconstruct market price in this case?

A No, I didn't really reconstruct it. I took a price which I thought represented the fair market value of Piper stock before anything happened, any tender offers, any fight for control.

Q So let me see if I understand it.

What you did was, the $52 that you took repre-

sented the fair market value of Piper as at January 1969, am I correct? January 22, 1969? That was your judgment?

A That was my judgment.

Q And it didn't represent, in your judgment, the fair market value of Piper as of September 5, 1969?

A It represented the market value element of an appraisal proceeding in my appraisal as of September 5, '69.

Q Are there any Pennsylvania cases that say that in determining the market value of a stock you take its market value nine months or eight months before the stockholder meeting?

A No, but the Pennsylvania cases and the statute does say that you have got to eliminate all value as a result of the announcement of the proposed merger or the proposed amendment.

Q So that you treated it as if on January 22, 1969, the proposal of merger had been made?

A I treated it -- I suppose you can say that, yes. In effect, that is what I did.

Q Did you look at what the last quarterly earnings of Piper had been in January 1969?

A No, sir. I didn't look at the last quarterly earnings.

Q So you didn't attempt to relate the January

market price to earnings and then a September price to earnings?

A No, I didn't.

Q And this was because this is the way you construed your assignment?

A This is the way I make an appraisal.

Q Well ~~Well~~, this was the way you would make an appraisal if the stockholder action took place on January 22nd, am I correct?

A If I was asked -- no, if I was asked to do an appraisal as of September 5, 1969, this is the way I would have done it.

Q You would have done it as if taking the market price on --

A If there had been fights, if there had been tenders offered back and forth, a fight for control, of course, that's the way I would have done it.

Q Even if the market had deteriorated in the interim?

A Even if the market deteriorated.

Q Can you point to a single case in Pennsylvania that has established that proposition? I will ask you again.

A The only proposition I can tell you, Mr. Liman,

is that the cases, both in Delaware and Pennsylvania, ~~either~~ rather the statute in Pennsylvania says you have got to eliminate any value as a result of the proposed corporate action.

Q Are you referring to the language in the Pennsylvania statute, "All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares as of the day prior to the date on which the vote was taken without regard to any depreciation or appreciation thereof in consequenceof the plan"?

A That's exactly right. And we say that-- much the same thing in the Delaware statute.

Q Can you now tell me whether there is a single case to which you can point that says that you should take your market price from the market price that prevailed some seven months before the plan of merger was proposed,even hypothetically?

A I can't find you any single case and I agree this is a judgment factor. And this is my judgment. I thought that was in my opinion the fair value before the market was affected at all.

Q Can you --

A By the contest.

Q Can you tell me at what point in time you would have stopped looking at January 22, 1969 for a market price? At what point in time would you have stopped looking at January 22, 1969, for a market price?

A Well, I don't know if I would ever stop looking, because, you know, when you go past the delisting in August, you don't have any market any more. And whatever market there was, you know, was so thin it was unrealistic.

Q Are there cases that say that if there's no market that you don't look to a market price?

A You try to reconstruct a market price. There are several cases on that where the attempt has been made. Whether or not the Courts have always gone along with that attempt, that's another thing.

Q But are there cases where the Court says since there was no market price, what we are going to do is look at, in effect, investment value and asset value?

A Sure, they look at both of them.

Q There are such cases?

A There are such cases, absolutely.

Q Are you in a position to tell me whether if there was no longer a representative market in Piper shares at some point in time, whether a Pennsylvania Court would definitely have reconstructed a market price?

A I don't know. All I can tell you is what I would do, Mr. Liman.

This is my opinion on what I would do and the market date that I would choose.

Q Up to a point in time?

A Up to a point in time, and I can't tell you today what thatpoint in time would be.

Q Do any of the cases with which you are familiar, where a market price is used, apply a discount for unmarketability?

A Oh, yes. Sure.

Q In fact, was a discount for unmarketability applied in Delaware Racing?

A There may have been. You know, it's been so long ago, I forget.

Q Well, did Standard Research Consultants apply a 10 per cent discount, do you recall?

I am taking it just from the decision. You don't recall?

A They probably did. They applied everything.

Q You are familiar with Felder V. Anderson, Clayton, Delaware?

A Yes, I am.

Q And it is fair to say that the appraiser there

discounted the multiple for lack of marketability; am I correct?

A Yes.

Q What discount did you apply to the January 22nd market price you used in your September 5th calculation for unmarketability, if any?

A Well, the discount is -- really, the date I should have taken it was September 5th and the date I did take it was January 22nd, and if you want to say it is a discount, there's a difference of ten points, practically.

Q Are you saying, then, that the reason that you didn't use this actual price that Piper was selling at on the Philadelphia exchange in September was because of unmarketability?

A Well, you could call it anything you want to, Mr. Liman. I call it the date upon which the market was not affected by the tender offers and the date for control. That's what I call it.

Q I am probably at fault in not understanding you.

THE COURT: Would you just read back that last answer?

(Read.)

Q In the cases that I cited to you, was there a discount for ~~marketability~~ unmarketability apart from any elimination of the

effectof the plan of merger?

A Yes, but the discount for ~~marketability~~ unmarketability was, you know, in the case of Delaware Racing Association, you had 4,000 share or 5,000 shares outstanding that just weren't being sold. And the other one you cited, I don't now how much was outstanding.

Q So in Delaware Racing, there was a discount for unmarketability because there was --

A There ~~were~~ was no stock.

Q There was a very, very thin market, am I correct?

A Non-existent.

I think we had ~~sales~~ a situation there where, you know, years would go buy without a sale at all.

Q Did you consider the market for Piper stock in Piper after September 5, 1969, as being a representative market?

A No, I ~~don't~~ didn't.

Q If that market had been considered as a representative market, do you know what market price would be used in a computation by an appraisal court in May of 1970?

A No, I don't.

Q Well, you know that the price has gone down to the 10 range, don't you?

A I heard that this morning, yes. I didn'tknow that.

Q Did yo umake any study of what had happened to Piper' stock after September of 1969?

A No. I made no -- I made no -- I had no figures of what happened to the stock after '69, no.

Q Did you ask for any?

A No, I didn't.

Q Did you consider it important?

A No. Not really.

Q And that is because of the nature of the assignment as conveyed to you?

A Because of the nature of the appraisal process itself.

Q And that you were to make a determination as of September 5th?

A That is right.

Q And that you were to use that January 22nd price?

A On, not that I was to use the January 22nd -- nobody told me that, Mr. Liman. That is my idea.

Q Did you make any effort to determine what price Chris-Craft could actually have gotten for its block of stock on September 5, 1969?

A You mean as an investment?

Q Attempting to sell it.

A No.

Q Do you agree with Judge Learned Hand that "Everybody knows that the value of shares in a commercial or manufacturing company depends c[illegible]on what they will earn, on which balance sheets thro[illegible]e light. When all is said, value is nothing more than what people will pay for the shares, given as wide an opportunity for bidders to come in as is reasonably possible".

A I think generally that is true, yes.

Q Do you agree with Judge Weinfeld that "The market evaluation of a stock may reflect a more realistic appraisal of its value than a conceptual value. Theory must yield to the reality of the marketplace, the true appraiser."

A Yes, that's why we weight market and earnings so high in ~~dollar~~ Delaware.

Q Now, you mentioned somewhere in your report some amendments to the Delaware law, page 18 of your report. Would you turn to it? I am looking at your original one and I hope this sentence is still in it.

A That's still there, yes, sir.

THE COURT: If he is looking for that, would you mind, Mr. Liman, for my general edification, to put the citation of Judge Learned Hand's case and Judge

Weinfeld's case on the record?

MR. LIMAN: Yes. Judge Learned Hands's is 11 Federal 2d at 152. And it is called Borg v. International Silver.

Judge Weinfeld's is Levin v. Mississippi Railroad Company, 59 FRD at 370. And he quotes himself in New York, New Haven Railroad v. United States, at 305 Fed. Supp. at 1069. I am not sure which one quotes which.

THE COURT: Is that in the dissenting opinion in this case?

MR. LIMAN: I think in one of them it was in the dissenting opinion, which he notes --

THE COURT: That was the New Haven case.

MR. LIMAN: The Supreme Court went with him.

THE COURT: On value?

MR. LIMAN: I don't know. I am just referring to the way in which it is cited in the opinion that cites it.

Q Address yourself to that paragraph on the bottom of page 18.

Would you read it, please, out loud, if you wouldn't mind?

A It says, "Since the 1967 and 1969 amendments, however, the legislature has substantially eliminated the

appraisal remedy for stocks listed on a national securities exchange on the implicit legislative determination that the market price of a listed security is the most objective and accurate indicator of its intrinsic value."

Q And what amendment are you referring to?

A The '67 amendment, Mr. Liman, to Section 262, made several provisions, really. No. 1, if a stock was listed on a national securities exchange and was held of record by more than 2,000 stockholders, there was no appraisal permitted unless the corporation -- what I will say -- which was being merged into didn't offer equity securities. If they offered debentures, that didn't apply.

Q In fact, had there been a provision adopted by the Pennsylvania legislature prior to 1969?

A Yes,sir, in '68, sir.

Q To eliminate appraisal?

A Yes, sir. If the stock was listed on the New York or American Stock Exchange and it was held by -- or held by more than 2500 stockholders, the same limitation would apply.

Q Is it fair to say that you interpret these provisions as reflecting, in the words of your report, "The implicit legislative determination that the

market price of a listed security is the most objective and accurate indicator of its intrinsic value."?

A Yes.

Q You gave an opinion as to the appraisal value in your terms of Chris-Craft's holdings at a point in time when it enjoyed a lead in the control contest with Bangor Punta; am I correct?

A I gave an appraised value -- no matter who was in the lead, I gave an appraised value per common share of stock on September 5, 1969.

Q And that appraisal remedy would come into play if there was a merger and if Chris-Craft were a dissenting shareholder?

A That's one way, yes.

Q Or if there had been some other --

A An amendment to the --

Q -- amendment.

A -- to the ~~charger~~ Charter eliminating cumulative voting.

Q Which could have given a right?

A Right.

Q And is it fair to say that if we look at it from the point of merger, that what you are saying is that if Chris-Craft was merged out when it was in the lead, or if it was merged out when it was in a permanent minority

position, it wouldn't matter to a Delaware court?

A It wouldn't matter in my opinion to an appraisal process.

Q And you have not attempted to express an opinion as to whether if Chris-Craft was leading 41 to 31 it could have been merged out against its will, have you?

A No, sir. It wouldn't make any difference.

Q Have you, in your vast experience, come across any cases in which a shareholder interested in control and having a 41to 31 lead has been merged out and relegated to a dissenter's right?

A No, sir, I have not.

Q And the same is true if we change the numbers to 42 to 37?

A No, the highest percentage I ever saw as in the Schenley case, where Rosensteil, I think, has got 14 or 15 per cent of the preferred stock.

Q But Mr. Rosensteil sold --

A Sold his common.

Q -- sold his common?

A Yes, sir.

Q And he sold it, and at the time of the merger Glen Alden had over 70 per cent of the stock?

A Yes, sir.

Q I am asking you, in any case in which somebody had had a lead 42 to 37 in which there's been a merger against its will.

A No, sir. Not that I am aware of.

Q You made an attempt to determine investment value, am I correct?

A Yes, sir.

Q Tell me what investment value is supposed to represent.

A Investment value represents earnings, capitalized as the Watt & Shand case says. Investment value is an estimate of present worth in light of past, present and prospective financial records of the company as obtained by capitalizing earnings.

Q Is investment value supposed to be something different from fair market value?

A Yes. It is supposed to be.

Q Is the capitalization --

A When you use fair market value --

Q I mean market price.

A All right.

Q What do you mean by fair market value? You have used the term.

A Well, the only reason I say that, fair market value

has a connotation in the real estate industry that I don't know whether you are trying to apply it here. Market value to me is what the stock is selling for on the market.

Q You mean market price?

A Market price.

Q And market value in the real estate industry means the price at which a buyer and a seller will --

A Ready, willing and able, right.

Q -- will make the deal?

A Right.

Q And you in fact have worked on condemnation cases in connection with highway takings?

A I have.

Q What is the capitalization rate in computing investment value supposed to represent?

A It is supposed to represent the present worth of that share of stock by using its earnings and capitalizing those earnings, and I suppose what the Court is really trying to say is that the capitalization rate represents what is going to happen in the future, they hope.

Q Does a capitalization rate represent the return that an investor would expect to receive on this company?

A Yes, I think so.

Q And capitalization rates vary from industry to industry, am I correct?

A Yes, sir, they do.

Q Is a capitalization rate supposed to reflect the stability of the earnings in the industry?

A I think generally, yes.

Q Is it a fact that in the Delaware Racing case, in which you represented the dissenters, you argued that there should be a substantial capitalization -- rather a substantial multiple --

A Absolutely.

Q -- which is the inverse of a low capitalization rate, am I correct?

A You are absolutely right.

Q And you argued that racing is an attractive field and it is almost like a utility?

A That is right.

Q And you argued that the closer you get to a utility, the higher the multiple, right?

A Yes, sir.

Q What was the multiple that the Court assigned in that case?

A I don't know. It wasn't ours, though, I know that.

Q Well, in making a judgment as to what the appropriate multiple might be for Piper, didn't you look at how the cases had assigned multiples?

A Yes, but you know, you are in a different industry, Mr. Liman, in the Delaware Racing Association and the Piper Aircraft. ~~It has~~ They have no relation to each other.

Q That may be, but as I understand the Delaware ~~basin~~ Racing case, you would have said that that should have commanded a higher multiple?

A If I were representing the plaintiff, I sure would. I would say a high multiple.

Q And it is not just a matter of advocacy --

THE COURT: What's the rest of the question?

Q I mean, is it your view that the racing industry has a lower or higher multiple than the aircraft industry?

A You are asking me as an appraiser or as an advocate?

Q As an appraiser now.

A I would say has a low.

Q Based on what?

A Based upon what I found out in the Delaware Racing case.

Q You mean the Court's decision?

A No, not necessarily the Court's decision. Really

our investigation of the industry. Garden State Parkway, Atlantic City, so forth.

Q Can you think of a case, can you point to a single case in Delaware that is assigned a multiple as high as you assigned to Piper in this case?

A No.

Q Can you point to a single case in Pennsylvania that has assigned a multiple anywhere near the multiple that you have assigned to Piper in this case?

A No.

Q What business was Levin v. Midland Ross in?

A Midland Ross was a -- one of the largest rayon producers in the United States. It was comparable to Piper, about the same size, roughly.

Q What was the multiple?

A Back in 1963, I think it was about 10.

Q 7.

A 7? Well, it may have been 7.

Q Anderson, Clayton, what business?

A Anderson, Clayton, as I recall, was in the peanut business.

Q Substantial company?

A I don't really recall. And I don't recall what the multiple was. But you are looking at history

as chancellor Seitz-as Justice Duffy said in the Universal Pictures case, these things - these 10 and under multiples are things of the past. We just don't use them any more.

Q In 1969, looking at this situation, would you have been able to predict what multiple a Pennsylvania Court would apply?

A I can't -- I am predicting now, in my opinion, this is what they would do. This is what I would do if I were appraising it.

Q Today?

A Today. Well, even in '69 I would do that.

Q And you would have predicted a multiple of 17?

A I think I would. Maybe even higher, you know, you can make those figures even go higher if you want to. You can make them go as high as 22.

Q 30?

A But I didn't think it was fair.

Q 30?

A I don't know as high as 30 but you can make it go higher than 17.

Q Can you make it go as low as 5?

A That would be hard to do.

Q 10?

A That would be hard to do.

Q Why?

A Because there's no -- you have nothing to compare it with to get that low. Unless you do what one of your witnesses did, made some kind of study to get an 11 per cent multiplier and I don't know how he got it there.

Q Do you consider Cessna to be a company that has some ~~comparable~~ comparability to Piper?

A Some, yes.

Q Are there some people who might say that Cessna is a stronger company?

A Some people might.

Q Did you consider Cessna to be a stronger company than Piper?

A No, I didn't think Cessna was even comparable to Piper, that's why I didn't use any relation between their price earnings ratio, that and Beech both.

Q Did you observe that Mr. Fitzgerald considered Cessna to have some probative value?

A Yes, he did.

Q You averaged Cessna's multiple to be 12.4, am I correct?

A Yes, sir. That is correct.

Q You said, as I understand it, that you found that Cessna and Beech's multiple really had no probative weight here or little, too little to use?

A Well, I don't even like to say that. I say if you did it the way our cases do it and you average the two, you come up with a multiplier of 8. But then if you do that, you are taking a price earnings ratio -- 18, rather. If you do that, then you are taking a multiple of Beech which in one year was 60 something and you know it is all out of proportion. It doesn't make a whole lot of sense.

Q Nobody is asking about Beech.

Z What about Cessna?

A If you did Cessna by itself, you would come up with a multipler of 12, 12.1, I guess.

Q You felt that would not be the appropriate measure?

A I did. I don't want to compare one company in an industry to one other company in an industry which is not even comparable.

Q Did you believe that the 425 companies in the Standard & Poors index were more comparable to Piper than Cessna?

A I thought they were certainly more representative of the overall industry, yes.

Q More comparable?

A Maybe not more comparable, but more representative.

Q Have Delaware cases applied to lower multiple for cyclical companies than for companies that are not cyclical?

A Not that I know of, Mr. Liman. Maybe if you have one case in particular -- I don't know. I don't know.

Q Now, I want to talk to you a moment about net asset value. You made an effort to recompute what the net asset value of Piper would be?

A Yes, sir.

Q And in the report which you submitted to us you stated, "The Lakeland, Florida, plant is situate upon 200 acres of ground owned by Piper. 100 acres were originally purchased in February 1969 and later expanded in 1972 to 200 acres. This plant was built during 1969 at a total cost of 1.8 million dollars. Since it did not ~~opened~~ until 1970, this amount doesn't appear on the balance sheet under property, plant and equipment. The building comprises of some 162,000 square feet."

I will ask you ~~weither~~ whether or not in your original report you made that statement.

A In my original report I made that statement.

Q And did somebody give you that information, that

that was not included in the 1969 financial statement?

A Well, I think it was a misunderstanding between myself and the controller, Mr. Cattoni.

Q After you submitted this report, did somebody in the last few days bring to your attention that I had made inquiry of Piper's auditors?

A No, sir, they certainly didn't.

Q Did somebody tell you that Piper's auditors on April 19, 1974, had confirmed to me what they said on the phone, thatthis figure was in fact included in the financial statement?

A No, sir, they didn't.

Q Did somebody bring to your attention that these figures were inaccurate?

A Oh, yes.

Q Who did?

A Oh, yes. Mr. Martin told me that he had sent a copy of my appraisal up to Mr. Cattoni and he had called him that this was an error.

Q When did --

A And the reason there was an error, very simply was because I had the asset ledger as of September '69, and I didn't have the construction ~~and~~ in progress ledger. And I thought that he had told me that the one point six

was not in the total buildings and equipment and it was.

Q You made an effort to be accurate, I take it?

A Yes, sir, I did.

Q When you submitted the report originally, you fed back into your figures to compute book value some million eight hundred thousand dollars which you said weren't on their books?

A Wasn't it a million six?

Q I have it on mine as a million eight, the original one.

A Wait a second.

Q Then it was deducted down by just 200,000. Page 15 it says a million eight, if you look at the original.

A Here, if you look on page 16, which I am informed was approximately 1.6 million dollars.

Q So you --

A The total cost of Lakeland was about a million -- between a million eight and a million nine.

Mr. Cattoni told me that there was spent as of 1969, September, about a million six. And it is really my error --

Q So that in your original report you computed a book value that was higher by a million six than in your present one?

A Oh, yes.

Q Then you also made some adjustments that remain in your present report for finished airplanes and service parts, am I correct?

A Right.

Q And what you did was you took the value of those planes as they appear on Piper's book at cost and increased it to the distributors price?

A That is correct.

Q Their net price to distributors?

A Well, I thought that was the only fair way of doing it. I suppose I could have taken each airplane and said, okay, what was the fair market value of that plane as of September 5, 1969.

Q Well, now, did you, in raising the price to distributors price, allow some selling expenses?

A Well, there had to be a selling expense in there because I just took distributors price anyway. That's all I took.

Q Distributors price is the price --

A Is not fair market.

Q Is distributors price the price that Piper sells to its distributor at?

A Absolutely.

Q Are there certain costs in your experience that are incurred in connection with selling to distributors?

A Sure.

Q Did you, when you raised the price from Pipers cost to its distributors price, to its price to its distributors, making a charge for the selling cost that would be incurred in converting this plane from something ~~that~~ ~~the~~ is booked at cost to something that realizes a distributors price?

A No, because about 90 per cent of these assets were already sold. They were completely sold and they were just waiting to be picked up by the -- by, you know, the eventual buyer.

Q When you say they were sold, do you mean there were deposits on them?

A Yes, sir. That's the way I understand they ran their twin engine market.

Q Did somebody tell you that in 1969 Piper had a policy of obtaining deposits from distributors?

A I don't know about deposits. Don't hold me to that, Mr. Liman, because I don't know. I do know that they build on order.

Q Did anybody --

A I was informed that 90 per cent, at least 90

per cent, of these items, these finished airplanes, were sold. Had been sold.

Q Had been committed for at that point?

A Had been committed for at that point.

Q Did you make any effort as to whether or not they ultimately were delivered at distributors price or at a discount?

A No, sir, I didn't.

Q So you don't know as you sit here today whether or not they realized the price that you assigned?

A No, I don't know that.

Q And you don't know if they did realize that price when they got paid?

A No, sir. I don't know that.

Q And you didn't allow any discount for cost of money to the extent that they weren't paid?

A No, sir, I didn't.

Q And you were aware, am I correct, that in 1970 Piper suffered a loss?

A But I would imagine these particular planes would certainly have been gone before 1970.

Q I am not asking for your imagination.

Did you know that Piper suffered a loss in 1970?

A Yes.

Q And you knew that Piper had on hand various parts and components and raw materials that go into manufacturing planes, am I correct, in 1969?

A Yes, sure.

Q And having looked at the Piper financial statement for 1970, you know that Piper realized less than what its cost was on these planes in 1970?

A There must have been some reason for the loss. Maybe that was one of them. Right.

THE COURT: Is there any overall significance to this assault on asset value?

MR. LIMAN: I don't know what the significance to asset value is, your Honor.

THE COURT: I know, but you are taking a lot of time in questioning the asset value which is the lowest in the entire equation. You took 15 per cent of the asset value, and suppose it was wrong up or down a million dollars, would it make any real difference per share?

MR. LIMAN: Your Honor, I have been taking them one by one.

THE COURT: I am not questioning you. I haven't stopped you. I just want to know whether we are going through an exercise here in disproportion.

MR.LIMAN: I am taking it step by step, your

Honor.

THE COURT: All right. Nobody is hurrying you. I have got a lot of time.

MR. LIMAN: If your Honor wishes me to stop, I will.

THE COURT: I don't wish you to stop. I want you to take all the time thatyou require to faithfully and properly represent your clients' interests.

Q And you know that in 1970 Piper suffered a loss of some $776,000; am I correct?

A Yes, sir; that is correct.

Q Did you make any effort to determine whether or not anyof the inventory on hand in 1969 had to be liquidated at less than cost?

A Well, only to this extent, Mr. Liman: In the first quarter of 1970, for the period ending December 31, I understand they made a million dollars. I didn't see the report but I understand that is so.

Q Did you learn that they were losing by the second quarter?

A They were certainly losing -- they must have been --

MR. RYAN: Your Honor, assuming facts not in evidece. It is incorrect.

Q Is it normal in your profession when you do an appraisal of assets to get an actual appraisal of what the assets are worth?

A Absolutely.

Q I take it in this case you just did not have that available?

A This was not that available, no, sir.

Q Would you say, Mr. Lank, that the capitalization rate to be used in determining investment value under Delaware procedure is the annual percentage return on investment with which the reasonable investor would be satisfied?

A Annual return on investment which -- yes. I think that's generally probably so.

Q Are you aware that Mr. Fitzgerald, in his report not of market price, but in his applying his discount rate, described 15% as the annual percentage return on investment with which the reasonable investor would be satisfied?

A That's what he said, yes.

Q Do you disagree with that?

A Yes. Of course he didn't do it the way I did mine. No similarity.

Q Apart from how he did his, you disagree that

15% would be the annual percentage return with which a reasonable investor would be satisfied?

A Then you are saying that a multiplier -- I guess an investor would be satisfied with a multiplier of 6.5 or 6.3.

Q You don't think a 15% capitalization rate is appropriate, I take it?

A I don't think it is appropriate in this case. The way I did mine, no. I do not.

Q Do you know whether any of the planes which were waiting to be picked up in September of 1969, which you increased in value, were Twin Commanches?

A No. I don't know that.

Q Do you know, finally, whether if the contest stood 41 to 31% Piper would have still qualified for listing on the New York Stock Exchange?

A No, I don't.

Q Did you make an inquiry?

A No, sir.

MR. LIMAN: I have no further questions.

MR. RYAN: I have no further questions, your Honor, but we now offer in Evidence Defendant's Exhibit BH.

MR. LIMAN: I have my objection but it goes to the principles of law, your Honor.

THE COURT: It will be received on the same basis as the others have been received and evaluated in accordance with the applicable principles of law.

[Defendant's Exhibit BH received in Evidence.]

THE COURT: Mr. Lank, I have a few questions, if you do not mind.

THE WITNESS: No, sir.

THE COURT: Has everyone else finished?

MR. RYAN: I have nothing further, your Honor.

MR. ARNING: I have nothing further, your Honor.

MR. LIMAN: I have nothing further, your Honor.

THE COURT: Have you had any experience evaluating along the lines of the value of an opportunity to obtain control of the stock of the corporation?

THE WITNESS: No, sir, I have not.

THE COURT: That's all I have.

We will recess now until tomorrow morning, at 10:30.

[Time noted: 5:15 p.m.; the proceedings adjourned to reconvene April 24th, 1974, 10:30 a.m.]

* * *

1 dhr

CHRIS-CRAFT INDUSTRIES, INC.,

- v s -

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, and the FIRST BOSTON CORPORATION,

69 Civ. 2227

April 24, 1974
10:30 a.m.

[Trial resumed.]

THE COURT: All right, gentlemen.

MR. ARNING: Defendants wish to call Donald R. Gant.

D O N A L D R . G A N T , called as a witness on behalf of Defendant First Boston Corporation, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARNING:

Q What is your occupation, Mr. Gant?

A I'm a partner in the investment banking firm of Goldman, Sachs & Company.

Q Would you recite for us briefly your higher education, background and professional experience?

A Yes, sir. I graduated from the Wharton School of the University of Pennsylvania, 1952, with a Bachelor of

Science in Economics; I graduated from the Harvard Business School in 1954 with a degree of Master of Business Administration.

Since that time I have been with Goldman, Sachs & Company for ten years as an associate in the Corporate Finance Department, and during the past nine and a half years as a partner.

Q Could you tell us briefly what your functions are, particularly in your relation to the public underwritings of securities?

A Basically, my functions during this twenty-year period have been to deal with corporate clients of Goldman, Sachs, to advise them on financing, to carry out public underwritings, private financings, mergers and acquisitions, to do evaluations of securities and to render miscellaneous services in the corporate finance area.

Q Do you participate in the making of decisions specifically on whether Goldman, Sachs will underwrite an issue?

A Yes, I do.

Q Can you give us some idea of about how many and how great a dollar amount of securities were involved in issues in 1973 in which Goldman, Sachs was either a manager or co-manager?

A I can give you the figure for the past five years Goldman, Sachs managed or co-managed. These are negotiated as opposed to competitive biddings.

368 issues with a total market value of $14.6 billion.

In 1973 we managed 40 issues with a total offering value of just under $2.9 billion, which ranked us third among the leading underwriters in that year.

I would say our position during the last five years has been in the top five.

Q These are corporate security issues as opposed to municipal or government?

A That's right.

Q Has Goldman, Sachs been particularly involved, perhaps moreso than some of the other leading underwriters, in issues which represent a partial interest in a subsidiary of another corporation?

A Yes. I think we probably have done as many or more of these partial offerings of a subsidiary stock.

MR. ARNING: I would like to have marked for Identification, as the Defendant's Exhibit BI, this report of Goldman, Sachs & Co.

[Defendant's First Boston Corporation Exhibit BI marked for Identification.]

Q Was the report marked for Identification as Defendant's Exhibit BI prepared under your supervision and direction, Mr. Gant?

A Yes, it was.

Q Would you please turn to the appendices or annexes and tell us, first, the purpose for which Annex A was prepared and the use to which you put it in preparing your report.

A Annex A is intended to show the value which public shareholders place on the voting right, and we have taken companies which have two classes of stock which differ only in their voting rights -- in all other respects are identical -- and track their market prices in relation to one another over a period of time.

In each case the voting -- the price of the voting stock is expressed as a percentage of the price of the non-voting stock, and what we believe it shows is that in almost every case the public does not pay any premium for a voting right.

In some cases these stocks are sold at a slight premium, in some cases at a slight discount; but, by and large, they do not reflect any premium paid for the right to vote.

Q Turn now to Annex B.

5 dhr Gant - direct

A Annex B is a compilation of public offerings of companies which were prior to the public offering and afterward a subsidiary of another company. In most cases the parent company has sold somewhere between 15 and 20% of the stock with that subsidiary creating a public market.

As I mentioned earlier, we have been the manager of a number of these offerings and this is intended just to show the number of these that have been done in recent years, the kind of price earnings ratio at which they were brought out, and then to some extent the price performance after the offering.

But it is intended to show that these have been done and at representative price earnings ratios.

THE COURT: Would you just read to me the beginning of the witness' answer? I did not get the first part of it.

[Answer read.]

Q Could you explain, Mr. Gant, what you mean by representative price earnings ratios in that answer?

A Well, it is to show that in some cases they've been done at quite high price earnings ratios, and others at low; but I would say they represent the typical public offering price earnings ratios. There is no, in our view, no discount for the fact that the company has a

majority stockholder and will continue to have after the offering.

Q Would you turn now to Annex C, please, and explain to us the content and purpose of that annex.

A Yes. Annex C is intended to show how minority shareholders have been treated in mergers by conglomerate companies, where the conglomerate had previously attained a majority interest.

Basically, we selected -- we went through all of the conglomerates that are in the Standard & Poor's conglomerate index, and there are nine of them, and we added one other, Rapid American, because it had been quite active in -- it had done a number of these minority mergers. And the intent of it is to show that in almost every case the minority shareholder received a premium in the merger over the market value of the stock prior to the announcement of the merger.

Q Would you turn now to Annex D, please, and tell us the content and purpose of that annex?

A Annex D shows the situations where a majority owner has preceded with a tender offer rather than a merger to increase his ownership of a subsidiary stock, and it is intended to show that in these cases the majority owner has offered a premium over the market value of the

minority stockholders' interest before the tender offer was made.

2/1

pgr Gant - direct

Q Would you turn now to Annex E and do the same with that exhibit.

A Annex E is a listing of all industrial common stock offerings during the year 1969 where the offering value was in excess of $20,000,000, and it lists the date, the type of offering, whether it was a company financing, a secondary offering, or an initial public offering for stock that had no market before. It lists the price at which it was offered. It lists the spread details of the underwriting, the compensation details for the offering. Basically it is intended to show that during the year 1969, and particularly during the latter part of 1969 while the general market had suffered a decline, very substantial common stock offerings were being done.

Q Did you also draw from that any conclusion as to the expense of a public offering?

A Yes, we did use this as a reference in arriving at our conclusion that for a public offering of approximately 700,000 shares of Piper Aircraft common stock that we believed the gross spread would have been in the area of 5%.

Q Perhaps you can direct yourself then to Annexes F through J as a group, since they seem to be more or less related. Just run through those and tell us what they

contain and why you saw fit to include them.

A Annex F is just a five-year summary of the income statements of Piper Aircraft Corporation as they were reported in their annual reports and in the prospectus through the Bangor Punta exchange offer, and below it has a percentage analysis of those figures.

The same in Annex G for Cessna, which we considered to be the most comparable company to Piper and which we relied upon in reaching our value, to a large extent.

Annex H gives the quarterly sales and earnings of Piper Aircraft for the years 1968, 1969, 1970, again to show the trend of earnings during the period in question.

Annex I is a summary of the relationships that we discerned between the price earnings ratio at which Piper Aircraft stock sold over a ten-year period and the price earnings ratio at which the Standard & Poor's 425 Stock Index sold, and the price index ratio at which Cessna Aircraft common stock sold.

We also made use of this in our analaysis of our estimate of the price at which public offering of Piper Aircraft stock could have been made in September of 1969.

Annex J is a comparison of certain statistics for Piper, Cessna, Beech, and the S & P 425 Index, and it is keyed to September 5, 1969. It is the kind of thing we

would be looking at if we were pricing an issue on that day which shows the relationships of price earnings ratio, dividend yields, and relationships to book value, and it is this kind of data that would have entered into our pricing decision.

Q Does that conclude your answer with respect to Annex J?

A Yes.

MR. ARNING: I don't think we need to take up Annex K, which was a summary of Mr. Gant's educational and professional background.

Q I don't think it is necessary to repeat everything in the study, Mr. Gant, but would you just give us the conclusion which you drew as to the price at which a hypothetical public offering of the price of Piper Aircraft might have been made on September 5, 1969?

A We reviewed what seemed to us to be the alternatives available had Chris-Craft wanted to sell its block of approximately 700,000 shares of Piper Aircraft stock on September 5, 1969 and came to the conclusion that the alternative which offered the potential of the highest net proceeds per share would have been a public offering of the stock through an underwriting group, and in our judgment that offering could have been made at an offering

price in the range of $44 to $46 a share on that day.

We also concluded that that price would have been the same regardless of whether Bangor Punta owned 37% of the outstanding shares of Piper or 51%.

We concluded that after our estimated underwriting fees and other expenses Chris-Craft would have realized net proceeds on the sale of between $41.60 and $43.50 per share.

MR. ARNING: Thank you very much.

The witness is ready for cross-examination.

CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Gant, my name is Arthur Liman and I represent Chris-Craft.

Mr. Gant, when were you retained to make this study?

A I believe the initial contact with our firm was back in February.

Q Of this year?

A Of this year. I got involved in March.

Q Was your assignment to determine what was the best price that Chris-Craft could realize had it wanted to sell its stock on September 5, 1969?

A That's how I interpreted it. It is the market value of Chris-Craft's block on that date which, to me,

represents an intention to sell, what they could have realized if they wanted to sell it.

Q If they came to you on September 5, 1969 and said that they wanted to sell, I take it you would have counseled them to undertake a public offering?

A Yes. That would have been our recommendation in terms of realizing the highest net proceeds.

Q Would you, on September 5, if they came to you, have given a commitment on behalf of Goldman, Sachs to act as the underwriter?

A A commitment to act as the underwriter?

Q Yes, sir.

A Well, let me say, Mr. Liman, I could not commit the firm as a partner to an underwriting for a new client. That would have to be put to our management committee who would make that decision.

Q Assume for the moment that Bangor Punta owned 50% of the stock of Piper; assume that Chris-Craft owned 42%; assume what other facts you know about the contest and how Bangor got to 50%. Tell me whether, in your best judgment, if Chris-Craft came to you on September 5 and said, "Here we are in this minority position; Bangor has the majority," would you have said to Chris-Craft at that point, " I will recommend the underwriting for our firm?"

A Yes. Based on what I know I would have no question about underwriting it from a point of view of Piper Aircraft Company.

The only question I would have is our continuing relationship with Piper and Bangor as its parent; as an underwriter, whether we would be in an adversary role representing Chris-Craft. That would be a consideration that we might want to take into consideration, but aside from that I would recommend it to my management committee.

Q Are you saying that if Piper came to you and asked you to underwrite some 42% of its stock you would have recommended it?

A That's right.

Q If Chris-Craft came to you and asked that its stock be sold, you would want to consult with Piper and Bangor Punta before you made your judgment; am I correct?

A That's right. I would want to know if we were going to be given complete cooperation from all those parties or whether it was to be an adversary proceeding in which we might not get all the information we would require.

Q I would take it, therefore, that your willingness to act as underwriter would depend upon their willingness to cooperate.

A That's right.

Q Let's assume, for the moment, that Bangor Punta and Piper said, "We are happy to cooperate." Would you, on September 5, then have given Chris-Craft a firm commitment as to the price at which you would distribute the stock?

A No, sir.

Q When would the pricing be done in relationship to the date that the offering would become effective?

A The pricing would be done in the case of the stock that is in the market probably on the day the offering takes place. Either then or the day before, depending upon whether you price it on a formula basis or on a fixed price basis.

Q Goldman, Sachs has done many, many underwritings. You have held the same position in that department for a number of years; am I correct?

A That's right.

Q You worked right under the manager of the department; is that fair to say?

A That's right.

Q Tell me what steps would have to take place between September 5 and the date of your offering in order for you, as Goldman, Sachs, to offer the shares to the public.

A Well, if you are assuming that we start on September 5 --

Q That's right.

A That's your assumption.

We would have to make an investigation of the company which would involve visiting their plants, talking to their management personnel, getting the complete story of problems and prospects.

One of the things that would enter into it would be the availability of financial statements. I think, from Goldman, Sachs' point of view, with a new client such as this that late in their fiscal year we would probably have wanted either audited September 30th statements or audited June 30th statements.

Q It has been your practice at Goldman, Sachs at this point in the fiscal year to ask for audited twelve months, hasn't it?

A It is the general practice. I can think of occasions for certain clients where we have offered stock in December with statements that went back to the preceding December.

Q Are those regular clients of yours?

A Those would be clients that we knew very well.

That's why I say with a new client it would be likely that many underwriters would require this, but also that many would not.

Q I am asking about Goldman, Sachs now. Goldman, Sachs, if it followed its practice, would ask for twelve-month financials.

A Not necessarily for twelve-month financials, but we would have asked probably in lieu of that for audited June 30th statements.

Q And then after you completed your investigation and after you had your audited financials, would you have consulted with anybody in your firm as to whether you would have wanted to do this by a registration statement? Would you have insisted on a registration statement for an offer of this size?

A I would assume it would require a registration statement. I think -- I am not a lawyer -- there might be a possibility of convincing the SEC when one party holds fifty plus percent that the other party is not in control, but that would be a matter of really getting a no-action letter, and in the absence of a no-action letter from the SEC we certainly would require a registration statement.

Q Let's take the possibility of a no-action letter for a moment.

If Chris-Craft had asked Piper and Bangor Punta for a registration statement and they had said that they were unwilling to cooperate by giving the registration statement -- and I am now talking about Goldman, Sachs -- would you have considered the relationship between Piper, Bangor Punta, and Chris-Craft such that Goldman, Sachs would have been willing to put its name on this underwriting?

A I don't understand your question.

Q If Bangor Punta and Piper had refused to give Chris-Craft the registration statement would you, in the light of your testimony that you would want to know whether there was an adversary relationship between Piper and Chris-Craft, have been willing to touch this offering?

A You are leaving out whether or not they could have in the light of that refusal gotten a no-action letter.

Q I am going to ask you, assuming they said, "We will not cooperate and give you a registration statement," and the SEC said, "Because they have refused to cooperate and won't give you a registration statement we will give you a no-action letter," would Goldman, Sachs have distributed that stock to the public knowing that Piper and Bangor Punta were unwilling to give a registration statement on it?

A I doubt that Goldman, Sachs would, assuming that

meant that Piper would not cooperate with us in telling us the status of the business at that point.

Q You know that Piper's audited twelve-month financials were not ready until the spring of 1970? Am I correct?

A I understand that.

Q Have you made any effort to determine what the price of the offering would be if you had to wait until those financials were in fact ready?

A No.

Q Maybe I misunderstand you.

You said that the market value of Chris-Craft stock on September 5 is the price at which it could have been underwritten on September 5; do I understand that?

A I don't understand you.

Q Maybe I misunderstood you.

Is the price you have assigned to September 5 for Chris-Craft --

A That's the price at which that block of stock could have been offered in a public offering, underwritten.

Q On that date?

A On that date.

Q I does not include any discount for illiquidity of the position pending any public offering?

A No. It only includes the price that would have been received by Chris-Craft on that day had they sold on that day.

Q Suppose Chris-Craft came to you on September 5 and said, "We need money; we can't wait until a registration statement or a no-action letter is obtained; we can't wait until Piper's financials are ready; we can't count on cooperation from Bangor Punta or Piper; what can you sell my block for today?" what would you have told them?

A I think if they had a commitment from Bangor Punta and Piper to go forward and register the shares, I think it would have been possible to find private investors who would have come in and taken their position looking to getting bailed out in the subsequent public offering and probably at some discount of 25, 30%.

Q If they didn't have that commitment on the underwriting?

A It would be almost impossible to place that.

Q Is it therefore your testimony in the real sense the marketability of Chris-Craft's block was subject to the control of Piper and Bangor Punta?

A I would say it was subject to Piper, Bangor Punta, and the SEC.

Q The SEC being that in the event Bangor Punta and

Piper would not give a registration statement, the SEC could still give a no-action letter?

A That's right.

Q In that event, as you have testified before, you can't say that you would have been willing to underwrite it?

A I can't say that Goldman, Sachs would, but I could say that somebody would.

Q Charlie Plohn?

A A respectable underwriting firm.

Q Are you saying that your standards are higher than the standards of the street?

A I am saying that there are firms who do underwritings that we will not do.

Q And get bigger spreads?

A And get bigger spreads.

Q You made a statement as to what Chris-Craft's block could have been underwritten at if Bangor Punta had 37% versus 50%, correct? You said that if Chris-Craft was getting out a public underwriting it would be the same price?

A Yes.

Q That would also be true if Chris-Craft decided to distribute its stock and Bangor Punta had only 31%, the price would be the same?

A Yes.

Q And it is a fact that if Chris-Craft decided with a substantial lead in a control contest to distribute its stock among the public that it, in effect, would be leaving control to Bangor Punta?

A That's right.

Q So that what you are saying on your assumptions is that by undertaking a public distribution of its shares whatever potential there may have been for obtaining control in a lead would be splintered and dissolved?

A As far as Chris=Craft goes?

Q Yes.

A Yes.

Q Indeed, on that hypothesis, if Chris-Craft had 51% of Piper and Bangor Punta had 31%, and Chris-Craft sought to distribute the 51% publicly, it would get no higher price; am I correct?

A That's right.

Q In fact, it would be fair to say, would it not, that the larger the block it was seeking to distribute the more difficult the underwriting might be? Would that be fair?

A At some point it becomes a factor, yes.

Q Based on your experience in the underwriting field

and as an investment banker with impressive credentials, would you agree that control positions do, in fact, demand premiums?

A They demand premiums if they are sold to someone who wants it and is prepared to use it. That would not apply to a public offering where the public is not interested in control and will not pay for it, as I tried to demonstrate.

Q Therefore, if a person has a control position which he has acquired at some cost, it would not be normal for him to take that control position and distribute it through a public offering?

A As a generalization, if he has a control position.

Q He would not do that? Is your answer yes or no, as a generalization?

A Well, it has been done many, many times. Hughes Tool, where the entire company was sold to the public.

Q Hughes Tool. Mr. Hughes wanted to liquidate his position, didn't he?

A If his company as a whole was worth more than it was to the public he would have sold it presumably as a whole. He sold it to the public. Whatever control value existed in that stock was dissipated when he sold it to the public.

Q You are not suggesting he could have gotten more

for 51% of the stock than he got for the whole company, are you?

A What I am saying, if a premium for control existed there he didn't realize it by selling it to the public.

Q He sold 100% to the public.

A That's right.

Q He didn't own 51% to begin with.

A He owned more.

Q He owned 100%.

A Yes.

Q Are there any cases that you know of where somebody owned 51% that he distributed the 51% to the public?

A I can't think of any but I would not be surprised.

Q You can't think of any though?

A Not offhand.

Q In fact, have you and Goldman, Sachs represented buyers who paid premiums for control?

A I don't know that we represented buyers that paid premiums for control. Generally buyers pay premiums to get all the stock in a company because they want to own it and bring it into their organization, and the fact is you cannot get all of the stockholders in a company to sell their stock at the going market. You have to pay them

some premium over that market in order to get them all to deliver their shares. Whether you are paying for control or totality is something else. I think you are paying a premium to get all the shares.

Q And what about cases in which people have paid the price substantially above market for 50% of the shares? There have been cases like that in your experience?

A That's right.

Q Is it your testimony that the reason they want to get the 50% is so they can ultimately pick up the rest?

A Generally it is the first step in that direction, yes.

Q Are you familiar with the acquisition of International Salt by Zout Organon?

A No.

Q Was Zout Organon a client of Goldman, Sachs?

A No.

Q Did you represent Zout Organon, to your knowledge, in bidding for 52% of the stock of International Salt?

A I don't know anything about that transaction. We may have, but I was not involved in it.

Q You were not aware that there was a premium of some 30% in that case?

A I'm not aware of the transaction.

18 pgr Gant - cross

MR. ARNING: Can we have an approximate date on the transaction, Mr. Liman?

MR. LIMAN: 9/8/69.

Q Duffy Mott, are you familiar with that?

A Yes.

Q Do you know whether you represented American Tobacco in its --

A Yes, we did.

Q Was there a premium paid in that case?

A Yes, there was.

Q Do you remember that it was about 33% above market?

A I don't remember the exact amount.

Q What about Great American, did you represent LTV in bidding for control of Great American?

A Great America.

Q Great America. Is that what it is?

A There's another company called Great American.

Q Of a different quality?

A Yes.

Q Did you represent LTV in that transaction?

A I'm not sure. Mr. Levy was the director of Great America, so we may have represented Great America. In fact, I think we did, and through that -- I'm not sure whether we represented Great America in that transaction or LTV, and I'm inclined to think we represented Great America since Mr. Levy, my senior partner, was a director of Great America.

Q Did you represent LTV in its bid for 63% of the

Jones & Lockland?

A I believe we were a dealer-manager, yes, along with Lehman Brothers.

Q Do you remember that that took place about May 14, 1968?

A I don't recall the date.

Q Do you remember that the price offered above the pre-existing market was something in the neighborhood of 75%?

A I remember it was a substantial premium.

Q And it was cash; that is correct, isn't it?

A That's right. I will agree if what you are trying to prove is a company that is trying to take over other companies generally pay premiums.

THE COURT: Premiums over what?

THE WITNESS: Premiums over what the fair market value would have been before the offer.

THE COURT: When you say "fair market value," you are not referring to market price, are you?

THE WITNESS: Yes. Generally, Judge, what we do is go back, and in trying to calculate the premium and trying to find the period prior to any announcement of the takeover or merger, find out what the market price was at that time, and then calculate the premium in terms of that.

THE COURT: So if any factors have stepped in to inflate or deflate the price at which transactions are made over the counter or on an exchange, the premium there might or might not be above the fair market price?

THE WITNESS: That's right.

THE COURT: The fair price.

THE WITNESS: That's true.

Q Before his Honor's questions, you said you would agree that companies seeking control do pay premiums or have paid premiums above --

A Yes, except I quarrel with "control." They're seeking to acquire all of the shares of the company, and in order to do that they have to pay a premium over the price at which people are willing to sell 100 shares of that stock.

Q And this has been done in cases in which you are familiar by paying a premium for a majority of the shares, or for a substantial block as the first step; isn't that correct?

A Very often it is done through the acquisition of a substantial block. Very often they seek the entire 100% of the shares at the same price.

Q Let us take it one by one now.

Can you focus on the cases that you are aware of

in which it is done by bidding for a very substantial block without making a concurrent bid for the remainder? Are you familiar with such cases?

A Yes, I am.

Q And you are familiar with cases of that nature in which a substantial premium has been paid?

A Yes, I am.

Q And you are familiar with such cases in which the block that has been purchased does not itself amount to 50% of the securities of the company ?

A Does not?

Q Yes.

A That's right.

Q A block can command this premium if it is a substantial block even if it is not 50%?

A It can, depending upon the way in which the remaining shares are held.

Q Did you familiarize yourself, in preparing for your testimony, with the prices that Bangor Punta paid and committed to pay for control of Piper?

A Yes, I am aware of those.

Q Did you observe that on May 8th, 1969, Bangor Punta entered into a commitment to the Piper family?

A Yes, I did.

5 dhr Gant - cross

Q And you, either by reading a summary of it or by reading an agreement, are familiar with what that commitment was?

A Yes, I am familiar with it.

Q At that time you were aware that Chris-Craft had some 33% of the stock of Piper?

A That's right.

Q Is it fair to say that you concluded that the price that the Piper family was to receive under this agreement, assuming that 50% of the stock of Piper was acquired by Bangor Punta, would represent a premium over the fair market value?

A Yes, I am.

Q Do you have an opinion as to why companies interested in control are willing to pay premiums for substantial blocks?

A Well, I think it varies. First of all, they have to pay a premium because that's the only way usually you can buy the stock. So if you want to control the company and acquire it, you have to pay a premium.

Q Could I stop you there?

You do not have to, I take it, buy the company if you do not think that it is worth what you are paying for it?

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6 dhr Gant - cross

A That's right. Presumably they have some motive which leads them to want to acquire the company. It may be that it has -- it's in a business which fits into their own business, and there is so-called synergism, where they can ~~prove~~ improve the earnings of the company they are acquiring or extend their product line or some other operating reason, which leads them to want to own that company. ~~it~~ It makes them willing to pay a premium to do it.

In the case of the conglomerates that were active in this period we're talking about, in many cases it was to get ahold of some liquid assets, as many of the insurance companies did that were taken over during this period, offered that attraction of a substantial amount of so-called surplus surplus which could be siphoned off and used.

Q Other reasons?

A Other reasons, again during this period, were to improve your earnings because many of these companies that acquired a high price earnings ratio, they could issue their stock at a substantial premium and still improve their earnings, because their own stocks were selling at ~~75~~ 25 to 40 times earnings.

So that if they found the company and paid a 50% or even a 100% premium, assuming its initial multiple

were low enough, they could still bring an increment in earnings into their own picture. So -- and that in turn would lead their stock to sell higher, making it possible for them to acquire other companies.

Q Any other reasons?

A There could be hundreds of reasons. These are the principal ones that come to mind.

Q There are situations that you are aware of that they buy in because they think the company has great potential in its industry that has not yet been realized?

A That's possible, too.

Q Have you made any analysis of what Bangor Punta's motive was in seeking control of Piper?

A I have not made any analysis. I have not discussed it with Bangor. I must say I don't understand their motives.

Q Do you conclude from your analysis that Bangor Punta acted imprudently in seeking control of Piper at these price levels?

MR. RYAN: Your Honor, he says, "imprudently." Imprudently from what sense, a financial standpoint?

THE COURT: I think we will take that up in another case.

MR. RYAN: That is correct, your Honor.

A Let me say that I would not have regarded in early

1969 Piper Aircraft as a logical candidate for anybody to want to take over, and if you told me that it would wind up with two people trying to take it over at prices up to $80 a share, I would not have believed it.

Q Do you know whether or not Goldman, Sachs has bought any Piper for its own position?

A For its own position?

Q Yes, sir.

A Not that I know of.

Q Have you checked?

A No.

Q Have you made any study of the aircraft industry?

A I haven't made a study of the aircraft industry. During the last two months I have read a lot of articles about the aircraft industry. I read the annual reports of Piper, Beech and Cessna going back several years.

Q Were you familiar with the industry in 1969?

A In 1969?

Q Yes, sir.

A No, not really in 1969. A little bit later I was.

Q Did you know whether there were any predictions of Piper as a candidate for takeover before Chris-Craft made its first purchase?

MR. RYAN: Objection, your Honor, unless he fixes

a time.

Q In late 1968.

A I do not know of any, no.

Q Is this an area that you were involved in at Goldman, Sachs, looking at companies that might be possible targets for takeover in order to take a position in them?

A We didn't do that, so nobody at Goldman, Sachs was involved in that.

Q Were there some firms and funds that did that in that period?

A I'm sure there were. There were obviously many funds and hedge funds that were doing that sort of thing, yes.

Q Were there some stocks where you think their price reflected the buying of people in the expectation that somebody would be taking it over?

A I would think so, yes.

Q Do you have an opinion as to whether or not Piper's stock price in the end of 1968 reflected any expectations that there would be a bid for it?

A At the end of 1968?

Q Yes, sir.

A Prior to Chris-Craft's tender?

Q Yes.

A I have no opinion on that. I have no way to know whether it did.

Q Take for a moment your charts. Could you get out Annex A for me, please?

Now, Annex A, you say, was intended to show that the public does not place a value on the right to vote in terms of its shares?

A That's right.

Q And you did this by comparing stocks that have two classes of stock, voting and non-voting; am I correct?

A Well --

Q Or limited voting?

A Limited voting.

THE COURT: You are both talking. I cannot hear either one.

THE WITNESS: I said voting and non-voting. I'm correcting him. In some cases it was a limited vote rather than no vote at all.

Q Did you make any effort in preparing this chart to determine whether the voting stock was controlled by one family?

A Controlled by one family?

Q Yes. That they had either a majority or a close to a majority of the voting stock.

A Well, I did not make any effort to determine that except that the primary reason to have this kind of a capitalization generally is to retain control of the voting stock.

Q So that if one family or one person retains control of the voting stock, then would it be fair to say that the remainder of the voting stock would have the same opportunities to change management as the non-voting stock?

THE COURT: Read that question back for me, Mr. Reporter.

MR. LIMAN: I will rephrase it, your Honor.

THE COURT: You withdraw it?

MR. LIMAN: Yes.

Q You say that the primary purpose of this kind of capitalization is so that a family or a party can retain control of the company; am I correct?

A That's when it is originally done. That may not be true 20, 30 years later.

Q Let us take it at the point that it is done.

A All right.

Q And assume --

THE COURT: Mr. Liman, do not advance on the witness. He may misunderstand it.

MR. LIMAN: I am sorry. I did not think I was

being threatening to him and I do not think he thought so. We are smiling at each other.

THE COURT: I am sure neither of you thought so, but it is an unconscious form of procedure.

MR. LIMAN: I apologize. I have no intention of intimidating.

THE COURT: There is no need for any of that, Mr. Liman. Please go ahead.

Q Assume that 30 to 50% of the voting stock is owned by the founding father of the company. Would you take that as the assumption? And in those circumstances, the remaining holders of the voting stock are holders of voting stock in a company that is controlled by the founding family; am I correct?

A That's right.

Q And the holders of the non-voting stock are the shareholders of a company controlled by the founding family; am I correct?

A That's right.

Q Would it be fair to say that there is not much difference between the influence in those circumstances that the voting public shareholders can have and the non-voting public shareholders can have?

A Well, it depends on whether you have cumulative

voting.

Q Well, in any of these cases do you have cumulative voting?

A I don't know, I didn't look that up.

Q Assume that they do not have cumulative voting. In those cases would there be a difference?

A In the effective control?

Q Yes.

A There would be no difference.

Q Is it a fact that in Home Oil, which you selected, some ~~3.89~~ 38.9% of the voting stock is owned by the Cygnus Corporation?

A I don't know that.

Q Did you know that the Cygnus Corporation held a very substantial block of Home Oil?

A No, I did not.

Q George Weston. I am sorry, Loblaw Company is listed there. Do you see that?

A Yes.

Q Do you know that some 58.8% of the stock of Loblaw is owned by George Weston, Limited?

A Which class?

Q Voting in each case.

A No, I did not know that.

Q In Molson Industries did you know that the family controlled the voting stock?

A I did not.

Q Do you know that in American Maize Products some 46% of the voting stock is owned by Great Island Holding?

A No, I do not.

Q Did you know that Great Island and the directors of American Maize also owned 51% of the limited voting stock?

A No, I do not.

Q Did you know that in A. C. Nielsen the family owned some 60% of the voting stock?

A No, I did not.

Q Did you make any study to determine what the relative trading was between the public voting and the public non-voting stock?

A No, I did not.

Q Who put this chart together for you, sir?

A Mr. Brown, who is sitting in the back there.

Q Did you know that in Plymouth Rubber there is no one family or group that owns a majority or substantially close to a majority of the voting stock?

A No, I understand there that they do.

Q Who did you understand owns the majority in

Plymouth?

A We understand the insiders control it. At least that's what the specialist tells us. That's the reason for why it sells as a premium, because the voting stock rarely trades.

Q So you made an inquiry in the case of Plymouth to determine why there was a premium?

A Only because it stands out in this thing as the only one where there is a premium.

Q But you did not make any inquiry as to what the control was in the other situations?

A No, I did not.

Q Were there some examples that you were familiar with in which voting stock traded at premiums that are not reflected in this chart?

A No, these are the only ones we could find where there were markets in both.

Q Did you make any inquiry concerning Resorts International?

A Resorts International, the one class of stock is so small that it did not constitute what we considered a trading market.

Q Cutter Labs?

A Cutter Labs is no longer traded. I believe it's

been acquired by someone.

Q In other words, you just took things that are current? Did you look at what the positions were of companies in 1969 where there were two classes?

A We went through the list and eliminated those that were -- the voting-non-voting distinction had been done away with, which it had in many cases.

Q So that in the case of Cutter Labs, that was eliminated even though it traded in the period that we are talking about, 1968, 1969?

A That's my understanding. As I say, I did not prepare this and that's my understanding of how it was prepared.

Q Cannon Mills, which is shown on your list, in fact had a reclassification of voting and non-voting , didn't it?

A I'm not aware of it.

Q You are not aware that the distinction between the classes was eliminated?

A No, I am not.

Q Let us look at Annex B, Mr. Gant, please.

This is a chart that shows offerings of stock of subsidiaries which either were 100% owned or, in one case, 99% owned ~~by~~ before the distribution?

A That's right.

Q Can you state what the purpose of the offering was in these cases?

A I can't state what the purpose was in every case. I think in most cases it was to create a market in the subsidiary stock. There were various purposes.

One of them was to indicate to the public the potential value that these parent companies had in their subsidiaries which may not have been reflected in the market price for the parent stock.

Another was to create a market for the subsidiary stock so that it could use that high multiple stock to make acquisitions on its own.

In some cases it was to obtain financing for either the subsidiary or the parent.

Q In all of those cases it is fair to say that it was in the interests of the parent to get the highest price for its stock, for the stock that it was offering?

A It was in the interest of the parent to see the stock sell at the highest price, not necessarily to get it on the public offering. In other words, they're much more interested in the after-market than they were in the initial public offering price.

Q And it was in their interest that in the after-market

the stock would trade at a substantial multiple and establish a high value for the stock that the company held?

A That was their interest.

Q In all of these cases is it fair to say that it was not the intent of the parent in offering the stock to sell it, realize money and then buy it back?

A It was not the original intent, no.

Q If you look down this list, where you show what the percentage was owned after the spinoff, am I correct that in all cases but Canteen Corporation it was more than 80%?

A That's true.

Q And in Canteen Corporation that was after the anti-trust decree, the now famous anti-trust decree, was entered requiring ITT to divest itself of Canteen?

A That's right.

Q And you could give the Court an explanation as to why these companies held onto at least 80% of the stock, can't you?

A Well, I would presume that in many cases it was dictated by tax consolidation reasons but I don't know that for a fact.

Q Do you know that tax consolidation is available at 80%?

A At 80%, yes.

Q You testified earlier that the normal intent in seeking control of a company is to ultimately acquire all of the company; that's a fair statement?

A That's generally true.

Q And looking at the Bangor Punta acquisition of Piper, is it fair to say that you, as an investment banker looking at these facts, would have assumed that at some point Bangor PUnta would want to increase its holdings beyond 50%?

A I think that would be a reasonable expectation at some point.

Q Is it fair to say that in no case on your Annex B is there an example in which the offering that you are referring to was made by a substantial minority holding?

A That's right.

Q They are all cases in which they are made by the controlling company?

A Not always. Sometimes the subsidiary itself sells the stock.

Q But it is 100% owned subsidiary, so it would be to the same effect; am I correct?

A That's right.

Q Is there any case that you can think of in which

a public offering was made by a 40% holder of the stock of the issuer where the issuer was controlled to the extent of 50% or more by another corporation?

A None that I can think of offhand.

Q In making this analysis for your testimony and report, was an effort made to find all examples of distributions of stock where there was a company that held more than a majority?

A No.

Q Would you have considered it pertinent to see whether there were any examples in which after one contestant to a contest for control gained 50%, the other contestant sold 40% through a public offering?

A I wouldn't consider that extremely important.

Q That is precisely the case that you are hypothesizing here, isn't it?

A Yes, but whether it had happened in the past or not doesn't really matter.

Q. But it did matter in your judgment what had happened in cases in which a hundred percent holder distributed part of his stock to create the market, and for the reasons that you have assigned? Yes or no, please.

A Yes.

Q Is there any case that you can think of, Mr. Gant,

in which there was a public offering by a large minority shareholder in which there was a majority holder who it was anticipated would be seeking to increase his holdings?

A I can't think offhand of any, no.

Q And your report at Page 4, in the paragraph that begins on that page, you state, and I will quote:

"However, legal proceedings by Chris-Craft were already underway which have effectively prevented Bangor Punta from excercizing its majority control to effect the merger, and this situation will continue for a period of at least five years after the settlement of this case."

That is your statement?

A That's right.

Q Are you familiar with what the status of the lawsuit was on September 5th, the day you picked for your valuation?

A Well, my understanding is that it was proceeding and that on September 17th an injunction was issued.

Q Were you advised that prior to September 5th Judge Tenney had rendered a decision denying an injunction in favor of Bangor Punta and holding that Bangor Punta had not violated the securities laws?

A That's right.

Q And you were advised that Chris-Craft had taken an appeal; am I correct?

A That's right.

Q Would you have predicted on September 5th that Chris-Craft would have won its appeal?

A I would have no basis to predict one way or the other.

Q You would not have predicted on September 5th that Chris-Craft's case would have been dismissed in 1971 by the District Court?

A I would not, no.

Q Or that that decision would have been reversed?

THE COURT: You would not have relied on me?

THE WITNESS: I wouldn't have predicted it after reading the facts in the case.

Q Or that it would have been reversed?

A That it would be reversed I would not predict, no.

THE COURT: Thank you.

Q In fact, Goldman, Sachs is generally not in the business of investing in litigations?

A Or of predicting outcomes of Court cases.

Q But you said here, if we go on, that you would have wanted some statement in the registration statement concerning Bangor Punta's intentions; is that fair?

A That's right.

Q If I read the statement to you in the report, you say:

"Even if the knowledge of this moratorium cannot be assumed to have been available to investors in September 1969, Bangor Punta, as the parent, and its principal offices, as directors of Piper, would have been parties to the registration statement covering the Chris-Craft shares and would have been required to disclose the details of any plan of merger or to state that it had no such plans."

That is correct?

A Yes.

THE COURT: By the way, the Chris-Craft shares referred to there are Piper shares held by Chris-Craft; is that right?

THE WITNESS: That's right.

MR. LIMAN: That is right, your Honor. It is more important to hear what his answer is, but that is the --

THE WITNESS: You're reading directly from the report.

Q I take it that you have been advised on this fact by your counsel?

A I have discussed it with counsel, yes.

Q And your counsel happens to be First Boston's counsel?

A That's right.

Q Whether or not the SEC would have required this, would you, as an underwriter, have insisted on some disclosure on this point?

A Yes, we would.

Q Would you, as an underwriter, have been satisfied with a statement that Bangor Punta has the power to compel a merger but has not yet made up its mind as to whether it will do so, when it will do so if it decides to merge, or what offering it would make on a merger?

THE COURT: Could you read that question again, please?

[Question read.]

A I would think it should say they have no present plan to merge. And that --

Q Well, suppose, sir -- let me put my question precisely -- it said that as the majority shareholder of Piper it had the power to cause Piper to merge, consolidate, sell its assets or liquidate without concurrence of the remaining Piper common stockholders?

A Period?

MR. ARNING: Excuse me. If that is the end of the question, I would like to have it defined. Mr. Liman said, "~~if~~ it" without saying what it is.

Q Bangor Punta said it.

MR. ARNING: Said it where, in what document?

MR. LIMAN: In the prospectus that Goldman,Sachs would be putting its name on if it did this underwriting.

A Let me --

MR. ARNING: That is not true, your Honor. There is no such registration statement. That cannot possibly be true.

THE COURT: Now that we have had the flurry all over with --

MR. LIMAN: May I withdraw the question and start so that we will not have this?

THE COURT: I do not know what we have, but you may withdraw the question.

Q You have said in your testimony that you would have asked for a disclosure in the Piper registration statement for an offering of Chris-Craft shares of certain facts relating to Bangor's ability to merge; am I correct?

A And its intentions.

Q My question to you is whether you would have been satisfied if the only statement you could get was that

Bangor Punta, as the majority holder of Piper stock, has the power to cause Piper to merge without the concurrence of the minority shareholders and subject to appraisal rights?

A No, I would not be satisfied with just that.

Q Would you have been satisfied if the prospectus, the hypothetical type of prospectus, said that Bangor Punta does not have sufficient information available to make a final decision as to whether to merge?

A I think I would have been satisfied with something that stated their intention. If they had an intent to merge, I would want them to say that. If they had not yet decided on the terms of that merger, that would have to be stated. If they decided they had an idea of the terms, that would have to be set forth.

t4/1 am

Q Assume that they said to you that they intend at some point to merge but they have not decided when or what to offer. Would you have been satisfied to proceed with the public offering of Chris-Craft's holdings ~~or~~ of Piper ~~Pier~~ stock under those circumstances?

A If they had made a final decision to merge?

Q That was what their intent was, in other words.

A This would be similar then to the language that was in the Chris-Craft prospectus that they intended to merge and the terms were indefinite. It would be more or less the kind of thing you are thinking of?

Q Yes, sir.

A I think I would have to learn from the people at Bangor Punta, if that were their response, how definite this was and how soon they contemplated they might be in a position to make that merger.

If it was something that was going to happen soon, I think I would have a question as to going forward with the registration statement.

Q Are you saying that again it was one of these matters where it would require the cooperation of Bangor Punta?

A Yes.

Q And if Bangor Punta said to you, "We don't want

to make any commitment to you, Goldman, Sachs, on how soon or how late we are going to merge," would your judgment on behalf of Goldman, Sachs be that you should not become the manager of this underwriting?

A I would like to have that read back.

(Record read.)

A (Continuing) It is hard to answer.

Q Would you have hesitated?

A If their attitude were just that, "Look, we are not going to tell you any more than that; we intend to merge, and beyond that we will give you no clue," then I think we are in the adversary position that I said before we would not put ourselves in, and we would not want to underwrite it.

If they explained their situation and said, "We think at some point we would want to merge but we don't know when or how or what securities we would use," it is so indefinite, it is way off in the future, it is a different situation.

Q As you sit here today --

A I cannot know what their position was.

Q Do you know what their position was then?

A My understanding of their position was that they had reached no decision as to whether they wanted

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to merge with Piper.

Q One way or another?

A One way or another.

Q Have you read the prospectuses in any of the cases of the public offerings listed in Annex B?

A I am familiar with two or three of them. I wrote one of them and there are two or three others that I am generally familiar with. I have not made a detailed study of each one of these prospectuses.

Q Which one did you write?

A Baskin-Robins.

Q In Baskin-Robins, it is fair to say there was no intention at the time that offering was made to buy back the shares?

A There was no intention, no.

Q It was not contemplated; is that fair?

A I would say it was not contemplated, no.

Q Do you know whether the prospectus in the Baskin-Robins case even made any disclosure of the power to merge?

A No. I don't believe it did other than to set forth the fact that United Brands would continue to be an 87 per cent stockholder.

Q You would not have considered it pertinent in that

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case to make a disclosure because there was clearly no intention on the part of United Brands to buy back stock that it was offering in the first place?

A That's right.

Q Do you know what was said in any of these other prospectuses for offerings listed in Annex B concerning whether there was a power of merger?

A Not specifically, but I don't know of any of these prospectuses in which that was set forth as a special item, although in fact in the Walter Kidde-LCA Corporation they did eventually buy back these shares. Some of the earlier ones that are not on here, that is LTV, did, particularly in the Wilson Company, particularly they remerged the spun-off subsidiaries back in and eliminated the majority interest.

Q Do you know when in the Walter Kidde, LCA bought back?

A I believe it was in '72 or '73.

Q Is it shown on any of your charts?

A No.

In the case of Baskin-Robins, United Brands subsequently sold its 83 per cent interest and the minority shareholders will be given the same price, in fact, a better deal by the company acquiring it.

Q Let's look at these Annex C premiums paid by certain conglomerates ~~emerges~~ in mergers of majority controlled subsidiaries. I take it you are quite familiar with the one listed on the second page, AMK-United Fruit?

A Yes.

Q You serve on the board of the surviving company, don't you?

A Yes.

Q Look at the last column. Is it headed Premium?

A Yes.

Q Is that the premium over the price that the conglomerate paid to acquire control in the first instance?

A That's the premium, as the footnote indicates, one month preceding the announcement of merger.

Q To take the case you are most familiar with, AMK-United Fruit, the premium is computed as of the month prior to June 30, 1970?

A That's right.

Q In fact, AMK acquired control of United Fruit well before that?

A In 1968.

Q Do you recall what price AMK in 1968 paid for the controlling shares acquired?

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A At what market value? The market value of June 30, 1970 or the market value in 1968?

Q 1968.

A A considerably higher amount than they paid in June of 1970.

Q Didn't they pay about $90 a share?

A Depending on what date you took the prices. I don't believe it ever got up to $90 but it was about $80.

Q Could the shareholders who took their offer have sold the package in the market at a price of $80 a share?

A It was in the low 80s. I don't recall.

Q Somewhere between 80 and 90 but closer to 80, you say?

A It is my recollection.

Q Did AMK pay Zapata Corporation a price for some stock that Zapata had?

A That's right.

Q Zapata was a rival in the control contest?

A Yes, sir.

Q And AMK paid Zapata to stop its tender offer and to sell the shares it acquired to AMK/

A I don't think that is literally true. Their

tender offer had expired and they had not gotten the number of shares that would have made them a serious contender, and AMK bought their shares at, I think, $80, primarily in notes, to eliminate them as a minority stockholder and a potential troublemaker, but not to win the proxy contest. They had already won that.

MR. LIMAN: I ask that this be marked as the next exhibit.

(Plaintiff's Exhibit 163 was marked for identification.)

MR. LIMAN: This is the proxy statement of AMK dated June 5, 1970.

Q I show you Plaintiff's Exhibit 163 for identification. I ask you whether you are familiar with this document.

A This whole document?

Q This proxy statement.

A Yes, I am.

Q What is it?

A It is the proxy statement used in the merger of United Fruit Company and AMK.

Q I would ask you to look at page 29. I ask you whether it refreshes your recollection that Zapata was engaged in soliciting tenders of United stock on January 27,

1969. AMK and Zapata entered into an agreement which provided, among other things, that Zapata would cease active solicitation of tenders of United stock. United shareholders who accepted Zapata's tender offer would be given an opportunity to withdraw their shares and deposit them under the excnange offer. Zapata would have an option to sell and AMK would have an option to purchase all United shares tendered pursuant to Zapata's tender offer and not withdrawn, and a cash payment of $3,800,000 by AMK to reimburse Zapata for costs and expenses incurred by Zapata in connection with its tender offer. Zapata exercised its option and on March 13, 1969 sold AMK 241,820 shares of United common stock and 435 shares of United preferred stock for $20,606,465, $85 for each share of United common stock, and $119 for each share of old United preferred stock, the first three million five hundred of which was paid in cash and the balance of which was paid through the issuance of 6-7/8 10 year subordinated notes of AMK payable in 10 annual installments.

That's the transaction?

A Yes.

Q Did you ever do a computation of what price that worked out to for Zapata, including the 3,800,000 that it received in cash for its so-called expenses?

xx

A Have I? No.

Q If you look at your chart on AMK-United Fruit --

THE COURT: What chart?

MR. LIMAN: Page 2 of Annex C.

Q You show that the market price before the 1970 merger was $17.50; am I correct?

A Yes.

Q Can you tell me whether in fact what you are referring to is the old United Fruit stock?

A This should be United Fruit stock.

Q In fact, were the minority shareholders offered on the exchange in June of 1970 a package that had a value of approximately $35 a share? In other words, I think your calculations did a disservice to your point in that you took the wrong stock.

A I didn't do these calculations. I'm sorry.

Q Let me show you from our exhibit for identification a sheet from the CCH Service that sets forth the pricing on exchange offers for tax purposes. Are you familiar with that, service? You have used it?

A Yes.

MR. LIMAN: I ask that this be marked for identification.

(Plaintiff's Exhibit 164 was marked for

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identification.)

Q I will ask you whether Exhibit 164 for identification refreshes your recollection and enables you to state what the package of securities was that was offered to the old United Fruit shareholders in June of 1970.

A Well, it would appear to be a package that had a market value, according to the CCH, of approximately $35.

Q That contrasts with the price that was paid at the time that AMK got control, which was a package that you say had a value of upwards of $80 a share?

A In those markets. Two years prior.

Q People could have sold those securities for that price?

A That's right, and the offer was open to everybody.

Q Would you look at Annex C again and tell me by your methodology if you assume Piper was selling today at about $10 on the Philadelphia-Baltimore exchange, and if you assume that its earnings last year were in the neighborhood --

Do you remember what they were last year? 270?

A 73?

Q I have the annual report. I will let you look at it.

Assume it was ~~$2.65~~ 2.65 a share. I take it you are familiar with what the multiple was that Cessna is selling at. To the extent you consider that relevant would you say that in this market, if Bangor Punta offered a price of $20 a share on a merger forPiper, by your method of analysis it would be a premium?

A Yes. That would be a premium over its present market price.

Q That's what this chart purports to show?

A That's right.

Q Mr. Gant, I will ask you to assume that it is August 7, 1969. I will ask you to assume that Chris-Craft has approximately 40.6 per cent of Piper's outstanding stock. I will ask you to assume that Bangor Punta has 30.5 per cent of Piper stock, all of which was paid for by the paper reflected in the Piper agreement. In those circumstances do you have an opinion as to whether you, as an investment banker, would have counselled Bangor Punta to invest cash in attempting to obtain control of Piper without making a deal with Chris-Craft?

A I would like to have that read back.

(Record read.)

A (Continuing) That's very difficult to answer because, first of all, you are presuming I would be counseling them to proceed and to try to acquire it. You have to assume that they have made a decision. I am not recommending continuance of this fight or that Piper is worth the effort that they have already put into it.

Q Would you have counselled them --

THE COURT: I don't think he has finished his answer.

A (Continuing) If you leave that aspect out they say, "We want to get control; what should we do? Should we try to buy out Chris-Craft? If we are not successful should we go forward with cash purchases or a tender offer?"

I think it depends on what Chris-Craft's position was at that time, whether they were in a financial position to meet any competition from Bangor Punta, whether they had the financial resources to bid for the stock in opposition to Bangor Punta. If they didn't and Bangor Punta did have the cash, they might very well have been advised to go forward and buy stock or to make a tender offer.

Q If Chris-Craft had the resources to continue?

A If they had the resources and if they appeared

to have the determination to meet any price that Bangor Punta was willing to pay, then I would think they would be very foolish not to try to negotiate with Chris-Craft.

Q Would it be your judgment that in the first instance if the contest stood at 40.6 to 30.5 that the prudent thing wouldbe to attempt to buy Chris-Craft's block?

A Again, if they wanted control and if Chris-Craft had the resources. It depends on the position of the two companies. I don't say I can answer it.

Q If you assume that Chris-Craft could not go any further than 40.5 --

A Then you are not required to deal with Chris-Craft.

Q And if you assume that Chris-Craft could go furth

A Again, if they have the cash resources and the determination, apparent determination, to pay whatever price is necessary, then their lead is quite formidable at that point.

Q You would say that lead was a very, very substantial advantage if they --

A Under those circumstances.

Q ~~Would~~ Would you say, sir, under those circumstances, that if Bangor Punta had approximately 45 per cent of Piper stock and Chris-Craft had approximately 41 per cent,

that Bangor Punta's lead would be a formidable one?

A Certainly not nearly as formidable as the prior circumstances, again assuming that Chris-Craft has the cash and the determination to go out and buy the stock. If they are willing to make a tender offer and top Bangor Punta's offer, they can get from a 41 position to 50 in the face of Bangor Punta's 45.

Q Would it be cheaper for Bangor Punta to go from 45 to 50 than Chris-Craft to go from 41 to 50?

A Would it take less dollars?

Q That makes it cheaper?

A It depends on what "cheap" means.

Q It would be less expensive?

A It would take less dollars.

Q Are you not prepared to say that the 45 to 41 lead is a formidable one?

A I said it is formidable but not insurmountable.

Q By the same token, a 41 to 31 lead would not be insurmountable, would it?

MR. ARNING: I believe this question has been answered three separate times.

A What assumptions are you making about the resources of the two parties?

If the one with 41 has the cash and the determin-

ation to get control, it is very hard to see how the one with the 31 can get there.

Q Have you made any study, sir, to determine whether or not if Chris Craft had been leading either 41 to 31 or 42 to 37, whether cash would have been available to it?

A To Chris-Craft?

Q Yes, sir.

A Well, I have made a study to the extent of looking at their financial condition and reading the testimony that was introduced in the trial about their various loan agreements and the restrictions that they were under and the potential availability of some money that might have been provided. I reviewed that.

I also read the conclusion of Judge Mansfield in the Court of Appeals that they were, in his judgment, out of money, could not proceed.

Q Did you read the majority opinion also on this point?

A I did.

Q You have not told me whether you made any investigation?

A Independent of that?

Q Yes, sir.

A No, sir.

Q You refer to Loan Restrictions. Have you, Goldman, Sachs, represented clients where loan restrictions have resulted in waivers?

A Yes. As a matter of fact, during the same period of time I was dealing with the same two gentlemen at IDS that apparently Chris-Craft was, and another situation where they were giving us 30-day waivers at a time and my experience is that it is very difficult.

Q Is it your experience that bankers seek to conserve their assets?

A Bankers?

Q Yes, sir.

A I think, as a generalization, that is true.

Q Would you think that bankers of Chris-Craft would have an incentive to prevent Chris-Craft from being placed in an unmarketable position if it held a 41-31 percent lead? Do you have an opinion on that?

A I can't generalize about that.

Q Are you aware that Chris-Craft owned three television stations?

A I am aware of it.

Q Did you make any attempt to determine what the market value of those television stations was in contrast

to their book?

A No, I did not.

Q Did you make any inquiry as to whether one of those television stations was sold at a price substantially above book?

MR. ARNING: Your Honor, we are trying to be patient, but we think it would be helpful if Mr. Liman would confine his examination to what the witness testified to on direct examination.

THE COURT: I will let him go as far as he wants.

A I did not make an investigation of that, no.

Q You don't therefore know whether that station was sold in order to even maintain the Piper investment?

A No,I don't.

Q I take it, therefore, that in making your analysis you proceeded on the assumption that Chris-Craft could not get the wherewithal to increase its holdings beyond 41 or 42 per cent?

A Well, I don't know that that assumption is necessarily important to my conclusions. My conclusions are based on the assumption they wanted to sell their position either before Bangor Punta had a majority or after.

Q Did anybody ever tell you that Chris-Craft

wanted to sell its position when it was ahead?

A Somebody asked me what the market value of its position was in those two circumstances. That, to me, implies, what could they get for it if they sold it? If they don't want to sell it --

Q Do you have an opinion as to what the value of control was in Piper?

A What do you mean by "control"?

Q What 50 per cent of the stock --

A With someone else holding 45 per cent?

Q Yes.

A You have got to define "control".

THE COURT: He says yes. He says one party has a majority.

A (Continuing) I think very little.

Q Would you say that control was worth what Bangor Punta paid for it?

A No, I would not.

Q Are you in a position to state a value for what Bangor Punta's block was worth on September 5th?

A I have not analyzed that and I am not in a positi no.

Q Have you done the arithmetic as to what your valu for Chris-Craft's block works out to on the assumption

it was distributed pursuant to a public offer, the total dollars?

A You can multiply 697,000 times those figures which are 4160 and 4350.

Q Take the highest, 4360, and for simplicity let's use 700,000.

A Just about 30 million.

Q I will write that figure on the board.

Assume with me for the purpose of the question that a 50 per cent interest in Piper would have a value of 50 million, which is below the cost to Bangor Punta by, I believe, some 14 million. Assume it has a value of $50 million which is below your book cost at that time by about $14 million.

I will put the 50 million which is the 50 per cent over here. I will put 30 million, 42 per ce

Let's assume that the cost to go from 42 per ce to 50 per cent was approximately $80 a share. Let's take a figure for that of somewhat over 10 million -- let's pu it at 11 million.

THE COURT: Off the record.

(Discussion off the record.)

Q I take it that if one really believed that 50 per cent had a value of 50 million dollars and if

Chris-Craft had the wherewithal to buy the remaining shares at the prices I am talking about and could get the 50 per cent, the most prudent thing for it to do would be to follow this course, which would give it a total value of 50 million. If it went by public distribution it would be 30 million. So there is a 20 million spread which can be bought at a cost of 11, in my assumption. Is that correct?

A On your assumption, yes.

Q In order to advise Chris-Craft as to whether to make a public distribution of its stock if it were ahead 41 to 31 or 42 to 37, would you want to inquire as to what control of this company under the circumstances would really be worth?

A I think to make that kind of calculation you have to have the second step: What are they going to do when they get to the 50 per cent, and what are they going to have to pay? What are they going to do about Bangor Punta if they are still there with 30, 40, or 45%? What does it cost to buy Bangor Punta out?

Q Suppose they say, "We will sit and take care of Bangor Punta at a later date"?

A What do you expect me to --

Q I want to know whether or not you would want to inquire in making the judgment as to whether Chris-Craft

with a lead should liquidate its position as to what the value of having a majority position would be to Chris-Craft?

A If they asked me for advice and I were to be the advisor, I might ask that question, yes, sir.

Q Did you ever inquire what advantage Bangor Punta saw in increasing its holdings from 44.5 per cent roughly to 50 per cent after its exchange offer?

A Did I? No, I didn't.

Q Did you ever inquire why Bangor Punta requested a condition in the Piper family agreement that it would not have to pay the adjusted figure unless it attained at least a majority.

MR. RYAN: May I have that question reread?

(Record read.)

A Well, first of all, I don't know that they did request it, but I did not inquire why if they did request it. I know such a provisio existed in that agreement.

THE COURT: Would this be a convenient point at which to suspend?

MR. LIMAN: Yes, your Honor.

I will shorten it so we are finished with him in 10 or 15 minutes after the break.

THE COURT: Can we resume at 2 o'clock?

Is that convenient to everybody?

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

D O N A L D R . G A N T , resumed.

CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Gant, would you turn to Page 8 of your report, and I direct your attention to the sentence that begins six lines from the top of the page:

"Our analysis led us to the conclusion that the offering could have been made at a price which capitalized Piper's earnings for the twelve months ended June 30, 1969, of $2.86 per share at a ratio equal to or slightly below the Standard & Poor's industrials and at approximately a 25% premium over Cessna's price earnings ratio."

Do you see that sentence?

A Yes, I do.

Q And you were referring to the pricing as of September 5th?

A As of September 5th of this block of stock.

Q Did you make any determination as to what the relationship of the PE ratio of Piper to the Standard & Poor's PE ratio would have been if you were trying to compute a market price of Piper in May of 1969?

A May of '69?

Q Yes, sir.

A No, I did not.

Q Did you make any effort to compute what these ratios should be if the offerin de in January of 1970?

A No, sir, I did not.

Q So you did it only for September?

A That's the date we were asked to opine on.

Q Do you recall what the reasoning was for choosing the one-for-one ratio with Standard & Poor's as of September 5th?

A Well, it evolved from a study of the -- of a lot of data including that relationship between those two variables over a long period of time. Looking at the market climate as it existed on September 5th, we took into consideration the fact that people were apprehensive about the economy for 1970, and being a cyclical situation, Piper could be expected to be questionable at that point in terms of its earnings for '70.

We had a copy of the management forecast dated August 25th of Piper which indicated that they were expecting sales in fiscal 1970 of about a hundred million, which was slightly below those for '69, and earnings of

about two twenty-three a share, which would have been oh, 20, 25% below those for 1969.

And in view of that, we anticipated that any prospectus issued around September 5th would have had to at least make some reference to the fact that their orders had slowed up, particularly on single-engine planes and that the outlook was somewhat doubtful -- in some way to convey to the investor that the 25% increase in 1969 earnings was not likely to be duplicated in 1970.

Q Where is the forecast that you used?

A Where is it? I have it if you want it.

Q Could you produce it?

A It's in the back part of that.

MR. LIMAN: Would you mark for Identification the document that the witness produced.

[Plaintiff's Exhibit 165 marked for Identification.]

Q Do you know who was on the corporate planning committee of Piper at this time?

A No, I don't know who was on the committee. I discussed this with Mr. Leeson, who was active in preparing those reports at that time.

Q Do you know whether or not Chris-Craft had any representative on this committee?

A No, I don't.

Q Was there any forecast in existence that Piper, to your knowledge --

THE COURT: Mr. Liman, when you turn around and start talking to the rear of the room I cannot hear you. I find it difficult to follow you as you walk around.

MR. LIMAN: Sorry.

Q Do you have any knowledge of whether there were any forecasts in existence at Piper other than this one, as of September 1969, any more recent ones?

A None more recent that that, no.

Q Were there any that went on beyond predicting 1970?

A No. You mean beyond the fiscal '70?

Q Yes, sir.

A No, I did not see any.

Q Did you inquire whether there was any?

A Well, we inquired in general terms of Mr. Leeson as to what was available. He came up with certain documents which that is the primary one as to the earnings outlook in September, early September, for the coming year. He did not indicate there was any longer range forecast than that.

Q Did you note on the last page, where it referred to comments and recommendations, that it said that, "The forecasts presented today are preliminary only and must be revised"?

A That's right.

Q Do you recall it saying, "Bangor Punta may want to review the studies and discussions we have had to date concerning the 1970 profit outlook to see if they could suggest other approaches to improving our prospects"?

A I read that, yes.

Q Did you inquire whether Bangor Punta did in fact consult with Piper in preparing this forecast?

A I don't think Bangor Punta prepared the forecast.

Q Whether --

A You mean whether the Piper office --

Q Whether they reviewed this and made suggestions to Piper concerning approaches to improving its prospects.

A Whether they did what was suggested there?

Q Yes.

A No, I did not know whether they did.

Q Would it be fair to say that the fact that the forecast that you had here, Exhibit 165 for Identification, showed a prediction of lower income than the prior years would have affected downward the price at which you would

have set the offering?

A That's right.

Q Would it also be fair to say that if as the year progressed the prospects became poorer, the price would also have to be adjusted downward?

A That's true.

Q Were you aware that in February 1970 Piper temporarily halted production in its Vero Beach, Florida plant?

A Yes, I was.

Q Were you aware that on February 18, 1970, Mr. Wallace was quoted in the Wall Street Journal as saying that, "The high cost and scarcity of credit are having an adverse effect on dealers and distributors of boats and aircraft"?

A I'm not familiar with that quotation.

Q Would the closing of the plant at Vero have had an effect on the pricing of your offering if it were to take place then?

A I would think it would.

THE COURT: Wait a minute. What does that mean? If there is a closing a year later, would it have an effect on a pricing a year later?

MR. LIMAN: A year later? Your Honor, February

THE COURT: Yes?

A You're asking would it have --

MR. LIMAN: Let me see if the question is clear. Would you please read back the question?

THE COURT: It is the date that I have not got clear in my mind. I thought you were talking about a closing of a plant in 1970 on an evaluation made in 1969.

MR. LIMAN: I think your HOnor will find that my question said if the offering could not be made until that date.

THE COURT: Until 1970?

MR. LIMAN: Yes, sir.

THE COURT: Oh, all right.

If you were to value it as of the time that there had already been a closing; is that the question?

MR. LIMAN: Yes, your Honor, right.

A As I understand your question, would the closing of the plant in February 1970 affect an offering subsequent to that date?

Q Right.

A Yes, it would.

Q And there could not have been an instant registration in September, could there?

A Well, we proceeded on the assumption that there was a registration statement available. Now, you know, theoretically Chris-Craft could have decided in August, when you say they decided they had no further chance to win, to sell their stock, and by September the 5th they could have had a registration, it's conceivable, but --

Q Were there audited financials ready by then?

A I don't know the completion of the audited financials.

MR. ARNING: Which audited financials? The witness assumed June 30th financials. They could have been ready. The question presumably indicates something else.

THE COURT: Let the witness testify.

Q Do you know that there were any audited nine-month financials for Piper available in September?

A I do not know, and I assume there would not have been. Usually they would not audit nine months' statements, but those statements could have been audited.

Q Are you still of the mind today, this afternoon, that the normal practice in the distribution, when there is a September 30th year, and you are talking about a distribution in September, would be to ask for a twelve-month audited financials? That would be your custom at Goldman,Sachs; am I correct?

THE COURT: I thought we have been over this several times, Mr. Liman.

MR. LIMAN: I withdraw it.

A I think I said it could be either of the nine months' audited or wait for twelve months' annual statement, and we've done it both ways in different cases.

Q And you have done it for nine months where it is a regular client?

A Yes, sir.

Q You also have said that you would have, before you made the offering, familiarized yourself with the condition of Piper; you would have done a due diligence search; am I correct?

A Yes.

Q Have you made any effort to recreate a due ~~diligent~~ diligence search as of September 1969?

A Well, certainly nothing along -- in the scope that we would if we were starting out on an offering in 1969. I have certainly reviewed all of this material, the things that came out ~~on~~ in the trial. I have discussed with Mr. Leeson the situation as it existed as best he can recall it from these various documents he's furnished me, as it stood at September 5, 1969, with respect to the status of the business, whether there were any indications

at that time that they were going to have the precipitous decline in sales which actually did take place in the coming fiscal year.

Q Did you find that there were not any indications of that in September?

A I satisfied myself that in this surface manner that there were no indications that, as I say, they were predicting slightly lower sales, but nothing in the magnitude of a 40% drop in sales which eventually occurred.

And reviewing their monthly reports I find it's not until about January that they start to reduce that hundred million, and from there on it was reduced drastically month by month.

But through the first quarter of that fiscal year, they were pretty much sticking with their forecast of a hundred million in sales for fiscal '70.

Q Did you, in the course of speaking to Mr. Leeson or in connection with your other studies, become familiar with any problems relating to a plane known as the PA-30 Twin Commanche?

A Yes, I did.

Q Did you become familiar with the fact that there had been an increase in Piper's insurance costs?

A That's right, I was.

Q Were you at any time told that Bangor Punta had complained to the Piper management that Piper had withheld from Bangor Punta the facts concerning the increase in the insurance costs?

A I was aware of that claim, yes.

Q And that Bangor Punta considered this increase to be material?

A Yes, I am aware of that.

Q Did you consider the increase in insurance costs to be material?

A Well, looking at it with hindsight, we now have the trend of insurance costs during that period and subsequently. I would have said it was material but not something that would be of great concern to investors. I think it would have required disclosure that insurance costs had been rising and could be expected to continue to rise.

Q Did you take that into account?

A Yes, sir, I did.

Q In your pricing decision?

A Yes, I did.

Q Did you discount that what otherwise would have been your price by the rising insurance costs?

A I took into the account the fact that the

prospectus would contain some language about the prospective problems with the Twin Commanche and the increase in insurance costs.

Frankly, I don't think that the language that would have been required at that time, as I understand those problems, would have been sufficient to change the price of the offering very much.

Q When you say "very much", do you have a figure in mind?

A I would certainly think not as much as one point.

Q By "one point", you mean one dollar?

A One dollar.

Q Were you aware that Chris-Craft, in September of 1969, had this lawsuit against Piper Aircraft Corporation as a party defendant?

A Yes, I was.

Q Would you have insisted that Chris-Craft give up its claim against Piper Aircraft Corporation as a condition of its selling its holdings in Piper?

A Well, I don't think I would have insisted on it because, as I understand the case, I think we would have looked into it thoroughly with our lawyers, but I don't see any material exposure of Piper that would have made the offering impractical or the price -- effect the price.

Q In other words, you would have concluded that the lawsuit was without merit?

A No, that the potential effect on the financial condition of Piper was not material.

Q And you would have acted as underwriter for Chris-Craft on a distribution of Piper stock at the very time that Chris-Craft, the seller, was pressing a claim stated in substantial dollar amounts against the issuer ?

A Well, Mr. Liman, you're getting me into the position of an underwriter. As we discussed earlier, I have never said that we would be in that position.

If you're asking me whether that would be a major drawback to an underwriter proceeding with the offering, I don't believe it would.

Q Another broker proceeding with it, you mean?

A Or us, if we were going to do it. But as I have said, we have not crossed that bridge because I can't tell you that we would have been in that underwriting position at that time.

Q Did you, in preparing your report, reach some conclusion as to the quality of Piper's prior management?

A Yes, I reached some conclusion. I don't think that I have had enough exposure to Piper's prior management to -- for it to be that meaningful, but I did

have an impression, yes.

Q Were you told that Bangor Punta considered Piper to have a management problem?

A No, I was not told that.

Q You are aware that approximately one year later, in 1970, Piper had a new president and chief executive officer, Mr. Mergen; am I correct?

A I'm aware of that, yes.

Q Was it your conclusion in reaching your judgment as to price of the hypothetical offering on September 5th, that Piper's management at that time was sufficient?

A As far as I know, Piper's management at that time was substantially the same management that had existed prior to Chris-Craft and Bangor coming on the scene. Investors had been aware of that.

The record of the company and the record of the price earnings ratios that investors had been willing to pay for the stock over the years is there. And I would not have considered management to have been a problem.

Q By that you mean you would have considered it sufficient?

2/1 pm

Q Would it have affected your offering price if at the time of the offering a new executive vice president, Mr. Mergen, had been brought in for operations?

A If at the time of the offering?

Q Yes. That happened in October or November of 1969.

A I have no basis on which to think that would have altered it at all.

Q Wouldn't you have thought it would have strengthened your offering if there were new management in?

A It would certainly be a plus based on his prior experience, yes.

Q I want to pick up a loose end on this AMK-United Fruit offer. I asked you about the price at the time they bid for control, Zapata, and you gave a figure of somewhat o· $80 a share.

Do you recall what the market price of United Fruit had been before the bid for control?

A When you say "before the bid," before any activity? Because you know, there are several people, Textron --

Q Before AMK made its bid.

A Well, you have to be more specific in the time

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frame than that.

Q Before the announcement. The period immediately preceding the announcement.

A Well, first of all, Mr. Liman, you must realize that offers, like your offers, were improved upon and increased. It was a long protracted battle. I really don't recall the price of United Fruit before the first announcement of an AMK offer.

Q Was it approximately $50 a share? Does that refresh your recollection?

A You are back in 1968?

Q Yes, sir.

A That sounds reasonable.

Q Finally, Mr. Gant, in making your analysis, you assumed that Chris-Craft wanted to sell its position; am I correct?

A That's right.

Q You assumed an underwriting on September 5th?

A That's right.

Q Did you make any effort to quantify a value for a reasonable chance of obtaining control of Piper on the assumption that Chris-Craft did not want to sell?

A Well, I would say indirectly I did in the sense that we -- as an alternative we tried to determine whether

another contender, another company, would have bought their position at some price higher than our estimate of its market value, in other words, paid a premium for their position on the theory that they had 42 per cent and Bangor Punta 31 per cent; it was our conclusion that it was not a reasonable expectation that such a buyer would come forth and, therefore, in our judgment there was no premium value to their position at that point.

THE COURT: Whose position?

THE WITNESS: There was no premium value to Chris-Craft's 42 per cent position at that point with Bangor Punta in its 37 per cent position.

THE COURT: At that point being --

THE WITNESS: September 5th.

Q So that you assumed that Chris-Craft would leave control by default to Bangor Punta?

A I don't know that I assumed that. I assumed that if they wanted to sell their stock on September 5th they would have looked at all alternatives and one of them would have been to try to realize any control premium there or leading position premium by finding another buyer to take over their position, and our conclusion was that it was highly unlikely they would have been able to do that,

and, therefore, they would have gotten the highest realization by selling it through a distribution.

Q Would you have concluded the same in August if they were ahead 41-31?

A Our conclusion there was that there, again, we were dealing in probabilities -- the probability would have been slightly higher of finding a buyer in August with a difference of 10 percentage points, but it still would be a low probability.

Q Did you attempt to quantify what the value, if any inherent in Chris-Craft's leading position was?

A At what time?

Q August, 41-31.

A The value now to whom? To Chris-Craft? To Bangor Punta? Or to a third party?

THE COURT: Take all of them.

Q All three.

A Well, Chris-Craft, I can't hope to tell you what the value could have been to them. I don't know what their expectation of victory could have been at that point. As I say, my impression is that their financial position was such that they could not continue to fight. If that's wrong there may be a different value -- or how badly they wanted to control the thing.

My experience in this type of thing, particularly as a result of this United Fruit thing, is when people get into a contest like this rationality is lost and they don't proceed rationally. All of a sudden the only objective is to win and I don't know how desperate Chris-Craft wanted to win and how desperately Bangor Punta wanted to win, and, therefore, what values they would have placed on that position.

I have really tried to deal with the only thing I can consider to be rational, and that is what would somebody who is not involved in this contest at that time, what could they have been expected to pay and come in and take over Chris-Craft's position?

THE COURT: What is your answer to that?

THE WITNESS: My answer to that is that they would not have been willing to pay any premium and probably they would have expected a discount from what they would have considered the stock to be worth if they wanted to try to sell it, which was, in my view, the $44-$46 range.

Q That's on the assumption of 41-31?

A That's on the assumption basically of 42-37. I don't believe that I would change it if it were 41-31.

Q Do you know a single case in which a company which acquired a 41-31 lead in a contest sold out by public offerin

MR. RYAN: Wasn't this question asked before, your Honor?

THE COURT: I suppose it was, and I suppose there is always a first time, and that doesn't prove anything.

A You surely don't mean the exact percentages.

Q Substantially.

A Obviously the thing that normally happens when you reach an impasse like this is one party or the other buys the other one out, and in many cases they then have a secondary distribution of the stock or the securities they got. But I don't know of a situation where one of the parties has had a distribution of the shares.

Q When you said that you do not believe that a third party would have taken over a 41-31 lead, have you --

THE COURT: He didn't say that.

Q Would it have bought into Chris-Craft's position at a price above its market value with a 41-31 position?

THE COURT: As I understood it, and I want to be sure because I made a note of it, he would not have been willing to pay a premium and would want a discount from the value given?

THE WITNESS: Probably want a discount.

Q Did you make any inquiry of logical third parties for this?

pgbr 7 Gant-cross

A In 1969 or now?

Q In preparing your report.

A What would anybody say but no. They would say "Heck, no. I never would have bought that."

In my view the market was pretty much your conglomerate operators at that point. To enter into a situation that was as messy and complicated as this one --

If you review what had happened with conglomerates in 1969 and the trend of the merger activity, I think you will find their stocks were all selling at 50, 60 per cent discounts from where they had been at the beginning of 1969.

They were selling 10 to 12 times earnings versus 30 to 35 times PE ratios enjoyed in 1968. I don't think they would have been interested in going into this situation putting down, again, I assume what they would pay Chris-Craft in cash for real value, not Chinese money.

Is that a fair assumption?

Q Take whatever assumption you would in creating the value that you are talking about.

A I am assuming we are not talking about creating a lot of debentures and warrants but real cash.

Q If the debentures have a value in excess --

A If they are immediately marketable.

THE COURT: By "Chinese money," are you talking about "funny money"?

THE WITNESS: Same thing.

Q What would a conglomerate have been willing to pay Chris-Craft in its debentures for its position assuming a 41-31 per cent lead.

THE COURT: Assuming Chris-Craft would be willing to take somebody's debentures.

A What interest rate?

Q 6 per cent. That's what Chris-Craft had issued.

A 6 per cent debentures at that point and time would probably be selling on a 10 or 10-1/2 per cent yield. You have a large discount. I can't answer that question.

One of these companies that had earnings of $300,000 or $400,000 would have been willing to pay a very substantial amount. The trouble would have been if you tried to realize on that.

Q If you take your own appraisal of the situation, is it fair to say thatyou would not have expected Bangor Punta to have spent some $80 a share in acquiring stock between the time its exchange offer closed ~~on~~ and September 5th -- is that fair to say? That your evaluation of control is such that you would not have expected Bangor Punta to have invested that cash in acquiring control in August of 1969?

A I would not, no.

Q And you would not, is it fair to say --

THE COURT: What are you saying? You would not have or not expected --

THE WITNESS: I would not have expected them to. As a rational outsider I would not have said it was worth paying $80 in August and early September of 1969 to acquire those shares.

Q You would have said the same thing in May of 1969 when they contracted with the Piper family knowing that Chris-Craft had a 33 per cent position? Is that fair?

A I think there --

MR. RYAN: I don't think he is comparing the two situations. The first question was $80 --

THE COURT: I follow. I follow.

A There are differences, Mr. Liman. In May, for example, the market was at a high. The conglomerate stocks were considerably higher than they were. Bangor Punta's stock was. Bangor Punta was using warrants and debentures. They were not paying cash.

Q They would be valued, in the judgment of First Boston, you are aware of that?

A Yes. It is still different from cash.

Q Would you have anticipated, given your appraisal

of the market on which you have expressed your opinion, Bangor Punta to get into this situation in May of 1969 when Chris-Craft had 33 per cent of the stock of Piper at the level it did under the Piper contract?

A I don't know if I can say what I would have expected. I would not have advised them, if they had asked me, to have gotten into it at that level, no.

Q As you sit here today, are you able to tell the Court what it was that either Bangor Punta or Chris-Craft saw in the value of control of this company?

A No, I am not. I really do not know.

THE COURT: Do we have a record in this case of how and when Chris-Craft moved up from 33 per cent to 41 per cent?

MR. LIMAN: By the exchange offer. It is in the case.

THE COURT: Have we anything that indicates when they did buying of their 8 per cent?

MR. LIMAN: They didn't do it. They did it through the exchange offer.

THE COURT: When they acquired it?

MR. LIMAN: Yes.

THE COURT: What is the day of that?

MR. RYAN: August 4th. They had a 10-day exchange

offer and it closed August 4th.

MR.LIMAN: They had a prior one and they replaced it.

MR. RYAN: The prior exchange offer was never consummated. It was withdrawn and supplemented by the exchange offer which went into effect on about July 29th, I believe.

THE WITNESS: That's the day.

THE COURT: That's the day I was thinking about.

MR.LIMAN: We substituted a sweeter offer for the prior offer.

THE COURT: It went regular on July 29th?

MR. RYAN: July 25th.

MR. LIMAN: We went regular on the first offer which was in May. I think it was May 17th or May 18th.

THE COURT: Did you get any stock on that?

MR. LIMAN: We got stock but what we did was because we kept supplementing that offer and the record shows that you cannot -- as you sweeten the offer you have to give people the opportunity to withdraw, so that as I recall it what happened was that we sweetened the offer and then there came a point when technically because we sweetened it now -- not by cash -- first it was by $10 in cash, and then we sweetened it by a different security;

we had to, technically, for the final sweetener, substitute a new amended registration statement.

THE COURT: It was not a favored nations payment? You didn't have to pay the fellows --

MR. LIMAN: Yes. Under the Williams Act, as I recall it, if you sweeten you can't take from the first guy who tenders at his price. That's what happened. Everybody who took our offer got the ~~file~~ final price. They had to be given the opportunity to withdraw, and that's in the record.

THE COURT: I have no recollection.

MR. RYAN: It's in the record. The Williams bill, that didn't come into effect until later. The offer was never consummated because they never met the minimum, which was 80,000 shares.

THE COURT: My only inquiry was that I wanted to know how the interest built up and what the dates were.

Is there any redirect examination?

MR. ARNING: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ARNING:

Q Mr. Gant, Mr. Liman has questioned you about the possibility of pricing the offering at some date other than September 5th. I realize you have not made the

necessary studies to do that, but can you express a point of view as to whether there would be any significant difference in the price in any event whether you assumed a 42-37 ratio in stock ownership or a 51-42 ownership by Bangor Punta and Chris-Craft?

A No. The offering price wouldbe the same at some later day ~~if~~ whether Bangor Punta had 51, 42, or 37.

Q Another one of the questions that Mr. Liman posed to you was to assume that Chris-Craft said to you on September 5th, 1969, "I can't wait for the normal registration and marketing process; I have to sell it this afternoon."

You indicated that would require some discount from the price you would otherwise determine.

Can you tell me, wouldn't that necessarily be true of any kind of seller who said, "You must dump it this afternoon; I can't take time for a normal marketing"?

A Yes. It is not a question of whose stock it is. It is finding somebody to take the risk of holding it until the papers could be processed and you have the offer.

A That's simply a distress sale?

A Yes.

THE COURT: An urgent sale.

Q I would like to refer you to the proxy statement

of the United Fruit-AMK merger, page 18.

Can you indicate from the information that appears on that page what the history was of the package given AMK's ~~MK~~ acquisition of United Fruit in 1968 as it passed into 1970 and the ultimate merger date?

A There is a price range on page 18 of that package which indicates it reached a high of 92-1/4 during the first quarter of 1969, and during the second quarter of 1970, immediately preceding the merger, it ranged from 55-3/8 down to 29-3/8.

Q So can you infer from that that in fact on the subsequent merger the stockholders got a similar package of securities to those offered on the initial acquisition?

A My recollection is that the value of the package that was given to the holders on the merger was at least as great, if not slightly greater, than the then market value of the original package, that they got equivalent market values. They were no worse off than if they had taken the original deal.

Q And held on?

A Yes.

Q Mr. Liman also asked you if you knew of any examples of a situation where the loser in a fight for control sold its stock publicly. Are you familiar with the

Crane-Westinghouse ~~air brake~~ Air Brake situation?

A I believe that Crane took his -- it was American Standard -- acquired it and took their securities after they lost the battle and then had a secondary offering of those securities.

Q Have you at any time from 1968 to date had experience in trying to enlist an outside party in a fight for control?

A We have had a great deal of experience, particularly back in those times, where clients of ours were, in effect, ~~rated~~ raided and ~~cmas~~ came to us to try to find someone to come in and fight off the raider, and our experience has been it is very, very difficult to get people to come into a fight for control. Most of them would rather hold your coat.

MR. ARNING: I have no further questions, your Honor.

THE COURT: Is there anything else?

MR. RYAN: No further questions, your Honor.

MR. SHIMER: No questions, your Honor.

MR. LIMAN: I have some questions, your Honor.

RECROSS EXAMINATION

BY MR. LIMAN:

Q Just to be sure I understand, when you said to Mr. Arning that the price would be the same even if you

priced it at alater date, whatever the ratio was of ownership between Chris-Craft and Bangor Punta, you are not suggesting that the price would have been --

A The same as it was in September, no. Just the same on either alternative at that date.

Q So that the record is clear, if Chris-Craft sold the stock in May of 1970, and they elected to sell it by public distribution on that date, it would have gotten via a public distribution the same price whether it owned 42 per cent or 52 per cent?

A Whether Bangor Punta owned 37 per cent or 50 per cent.

Q And the same would be true whether Chris-Craft owned 42 per cent or 50 per cent?

A Right, but not the same price that we came up with for September 5th.

Q That's right. This is on the assumption that they would have found it advantageous to distribute via a public offering as opposed to holding control themselves?

A That's right.

THE COURT: Is everybody finished?

MR. RYAN: Yes, your Honor.

MR. ARNING: Yes, your Honor.

MR. LIMAN: Yes, your Honor.

THE COURT: Mr. Gant, bearing in mind the value that you reached for a block of part of the stock of Piper, at what figure would you value 100 per cent of the stock for public distribution in September of 1969?

THE WITNESS: Would I value 100 per cent?

THE COURT: Yes.

If instead of having to distribute 42 per cent would you be distributing 100 per cent at the same price, a lowerprice, or a higher price?

THE WITNESS: It would be a lower price. I don't know how much lower, but the mere size of the offering would require a lower price than 42 per cent.

THE COURT: Would that be the only factor that would discount the price, the size?

THE WITNESS: You have the psychological factor "Why is everybody selling all at once?"

THE COURT: What I am getting at is this: There has been a suggestion here that one of the backgrounds for obtaining a majority of the management called control -- I use it in that sense -- was the possibility that this was a stepping stone to taking over altogether. What I am trying to find out is whether that opportunity, created by getting to step 1, would have any value to it if you contemplated valuing the whole enterprise? Is there any gap

between doing a part of the job and doing the whole job?

THE WITNESS: I'm not sure I follow you. You mean selling all of the company at once?

THE COURT: Yes.

THE WITNESS: That has been done on several occasions where 100 per cent of the company was sold.

THE COURT: I don't think that we have yet met on common semantic ground.

As a matter of practical finance, is the value of the opportunity to obtain control measured by the value of the use to which it would be put?

THE WITNESS: Yes, it would be.

THE COURT: If the use to which it would be put would be to capture 100 per cent of the company, what is it worth to have 100 per cent of the company to sell in relation to what value you put on a sale of 42 per cent of the company?

THE WITNESS: If I understand you, there is no value if you are going to sell it becaue the market does not place any value on control. The company will sell on an investment basis in the market and any premium that has been paid for control accumulating 100 per cent of the stock would dissipate if you then turned around and sold 100 per cent of the stock.

THE COURT: You would not place any premium on your valuation, your chance to get into a position to acquire the entire company?

THE WITNESS: I don't know that follows, your Honor.

THE COURT: If it doesn't follow --

THE WITNESS: Your second assumption is that they would subsequently want to sell it?

THE COURT: Yes.

THE WITNESS: I would say nobody would pay a premium to acquire 100 per cent of the company in order to sell that company in a public distribution.

THE COURT: Isn't the purpose of obtaining control, as a practical matter, to enhance the value of the investment with an object to sell it?

THE WITNESS: No. I think most companies that acquire control don't do it with the idea of realizing on it and selling it. They do it with the idea of capitalizing on the earnings and bringing those earnings into their own income statement and, hopefully, improving their earnings per share. I think that's the prime area.

THE COURT: One of the things you did say -- a diversion for a moment -- was that in those times -- I won't put an adjective to what kind of times they were -- high multiple stock companies were looking for low multiple

stocks to draw up the earnings, to fuse them, and step up their price?

THE WITNESS: That's right.

THE COURT: There is one other question I want to ask you: If the value of the opportunity to obtain control is measured by the value of the use to which it is put, do you discount in determining your ultimate figure by the cost and the time factors involved?

THE WITNESS: Yes.

THE COURT: You have been questioned here about the chance that one acquiring control may change management. Did you make any comparison of the managerial skills of Bangor Punta and Chris-Craft as demonstrated by the management of their respective conglomerations?

THE WITNESS: No. My general impression would be that there is not a great deal to choose.

THE COURT: So you would not give anybody a plus by a change on that score?

THE WITNESS: Well, let me say this: We concluded that given a situation where Chris-Craft is selling its stock and Bangor Punta remains that we don't have a problem with management because presumably the same management is there. If the roles were reversed and Chris-Craft had won and Bangor Punta was selling its stock,

I think any underwriter would have great apprehension during that period as to what the management situation would be at Piper. Are the people going to stay? Is Chris-Craft going to take revenge on them?

It would be a very large imponderable that an underwriter would have to consider in that situation, but given the fact that Bangor Punta and Piper management were united, we didn't see it as a problem. We were not looking to Bangor Punta's management as any kind of factor in the offering.

THE COURT: Did you find any unique managerial skill that resided in the Chris-Craft management that would have enhanced the value of its holdings if it had gotten control?

THE WITNESS: I would have to say I did not look for that skill. I did read their annual reports and I have looked at their records and that does not lead me to believe that it is apparent. If it is apparent I don't know it.

THE COURT: Do you have a recollection what price earnings Chris-Craft was selling at around these times?

THE WITNESS: In September?

THE COURT: In 1969.

THE WITNESS: I think it changed drastically from the beginning of, say January when they first embarked on their tender offer. It seems to me it was up close to 20 or the high teens, and then it was down, as I recall, around 10 at the time we are talking about. That's my recollection.

THE COURT: I just wanted to make sure of this: In testifying to the price range of 44 to 46 per share, was that your opinion of the price for the block or was it for a 100 share lot?

THE WITNESS: That's the price at which the entire block could have been sold publicly.

THE COURT: Mr. Liman, do you have anything else?

RECROSS EXAMINATION

BY MR. LIMAN (Continued):

Q The price at which it could be publicly sold on September 5th?

A On September 5th.

Q In answer to one of his Honor's questions, you said that it would not be anticipated that somebody would pay a premium for control with a view to then distributing the stock of a company after he gained control?

A That's right.

Q I think you also said that if they did that it

would dissipate the premium?

A Yes.

Q Would you explain to the Court what you mean when you say that it would have dissipated the premium?

A Well, what I mean is that the public would not pay a premium price for stock just because you are offering 100 per cent or 50 per cent. The public is interested in what is 100 shares worth, and that will be the price.

If we assume, for example, that a realistic investment price for the stock is 40 and somebody in the process of gaining control pays prices of 50 and 60 and then turns around and sells 100 per cent of it, they are going to lose because the price they are going to get is roughly 40, the investment value, and not -- no premium for the control aspect.

Q By that same chain of reasoning, you would say that if Bangor Punta on September 5th came to you and said, "We have had enough; distribute our 51 per cent," they would get the underwriting price that you assigned for Chris-Craft?

A That's right.

Q If they did that Chris-Craft would control.

A If Chris-Craft had not sold, that's right.

Q It is fair to say then, isn't it, that control

has a value normally in excess of what you could get for distributing that control block in the public market?

A I think we had this question before.

Control normally does where control represents what I regard as control, not a locked board or a 50-50 situation. That would not give the purchaser the attributes of control that he would be looking for which he will pay a premium price. ~~for.~~

Q Assume that one of the attributes of control that the buyer gets is the right to compel a merger, and assume that he gets the right to have a majority of the board. Have blocks of stock been sold at premiums in those circumstances ?

A Again, if the block of 50 per cent plus is not opposed by another block of 40 per cent, I would say it would command a premium, but where you have a right to compel a merger but you have the uncertainty of the cash appraisal award, you don't know how much it will be and whether you will be able to finance it, then that right is not worth very much.

Q You say "not worth very much."

Would you say it goes to the value of control?

A That what?

Q That the fact that there is an outstanding block

goes to the value of control.

A The fact that there is a counter balancing block greatly dilutes the value of control. It rests in the 55 per cent block.

Q Did you make an effort to quantify in terms of the Piper situation what 51 per cent was worth versus 41 per cent?

A No, I did not.

THE COURT: What would be the elements of that kind of quantification, at least in theory?

THE WITNESS: Well, if you started with what would someone pay to control Piper, assuming that these two had never happened on the scene, and Mr. Piper decided it was time to step down and he didn't want to run the company any more and went looking for a merger partner, I would expect that somebody would pay a premium of, say, 20 to 30 per centof the market value of Piper at the time.

THE COURT: "Market value" meaning the fair value?

THE WITNESS: The price at which it was selling, assume it was not distorted by rumo[illegible]r anything else. That would be to have a nice peaceful enjoyment where you get 100 per cent and whatever management continuity you wish, and no fights, no legal problems. That would be my

best guess to what somebody would pay.

What they would pay to have a 51 per cent position where you have an opponent holding 42 per cent, cumulative voting, where the board is divided, lawsuits, I really don't know how to go about appraising it, but I don't think it would be very much.

THE COURT: What does "very much" mean? I can't tell the way you express it. You mean it is diminimus?

THE WITNESS: It is certainly less than 20 per cent, so it might be 5 per cent, 10 per cent.

THE COURT: 5 or 10 per cent of what?

THE WITNESS: Of the fair market value, again.

BY MR. LIMAN:

Q Mr. Gant, in giving that answer did you take into account that there would be lawsuits? You mentioned lawsuits. What lawsuits?

A I am describing an atmosphere in which the holder of the majority has a very vocal minority stockholder who is contesting his position and where the board is divided and where litigation proceeds, that that is not an atmosphere that most people want to get into and for which they will pay a premium.

Q If you assume that control where there is a

substantial opposing block has little value, why do you assume that the minority would be contesting the fact that somebody has more shares?

A You are assuming ~~rationale~~ rationality. Is this system rational?

Q Mr. Gant, do you assign any probative weight in determining what the value of control would be in a cumulative voting corporation with a substantial opposing block to the price that Bangor was willing to pay? Yes or no.

A I will have to have that repeated.

(Record read.)

MR. ARNING: The witness should be instructed he doesn't have to answer yes or no.

A Explain what you mean by "probative weight."

Q Is it a factor you would take into account in attempting to make an analysis of what control was worth in those circumstances?

A Let me see if I understand the question. Would I take into consideration the fact that there was cumulative voting --

Q No.

You have in Piper the situation you were describing, an opposing block of size and cumulative

voting. You know that Bangor Punta bid up to $80 a share in cash for blocks of stock knowing these facts, Chris-Craft's block and cumulative voting. I ask you whether in attempting to evaluate what control is worth in such a situation would you assign any weight to what Bangor Punta was willing in fact to pay?

A No.

Q Is it also true that in reaching this conclusion thatyou have assigned no weight to what Chris-Craft was willing to pay in cash for its position knowing that the Pipers had a substantial block outstanding?

A Well, if you say "assigned no weight," I don't know. I would not regard this as any conclusive evidence as value what either of those parties would be willing to pay under the circumstances.

Q As you reviewed this preparation for your testimony, the history of prior contested bids for control, did you come across cases in which one party bid a substantial premium for control where there was another party with a block also seeking control?

A Yes.

Q Is it fair to say that in those situations the presence of the opposing block did not deter the bid?

A That's true.

As I said before, my experience in these things is that they become irrational.

Q Is it fair to say that whether somebody pays something for rational reasons or irrational reasons, it is worth the same to the person who gets it?

A I will say yesto that, but I would like to say that someone who is not involved in the contest can afford to be rational and is not likely to be drawn in the same way someone who is involved in the contest is. In other words, he has the choice.

Q In all of the tested cases that you have reviewed there was a time when one party had a posi[illegible]n and another one came in to the picture. Am I correct? Or in many of them?

A That's usually the way.

Q They had the choice whether to get in or not get in?

A That's right.

Q In those circumstances, in general, after one party took a commanding position it bought out the other.

THE COURT: You mean the other sold out?

MR. LIMAN: It bought out the other. That's what I mean, your Honor.

THE COURT: All right.

That's one of the facts of financial life, I think, we are all quite familiar with.

A I have not found a situation where that kind of contest was proceeding where a third party came in and bought out one of the two.

Q Have you found a contest in which one person got control illegally and then bought out the other?

A Illegally?

Q Yes, sir.

A No.

Q When you were talking finally about factors that would affect your underwriting business, would the price at which Piper was selling on the Philadelphia-Baltimore-Washington exchange have any influence on your pricing decision?

A Well, it would not influence --

Let me put it this way: It has an influence in that it is a market that would have to be reported in prospectus. You would have to deal with that price. My expectation would have been that when this was announced, that Chris-Craft was going to sell its stock and the amount of stock that was going, that that price would have adjusted to approximately the range I have indicated we thought the offering would come out perhaps a little

higher than that would be my expectation.

Q In other words, you think that the announcement would have had downward pressure on the price?

A That's right. As I recall the price at September 5th on the Philadelphia-Baltimore exchange, it was approximately 60.

Q Did you consider this a representative price?

A No. I considered it to have no relevance. I would anticipate that that price reflected some anticipation of a deal between Chris-Craft and Bangor Punta, which would be then made open to all the other shareholders, and that deal would be at some premium over the price that I was using of 44 to 46, and that 60 represented expectation of being taken out of the price, around there or higher.

Q In the final analysis, the price that a public offering would command, assuming you could get the cooperation for the registration statement and no-action letter, would depend on when you could make that offer?

A The price would differ between dates. It would not be the same.

MR. LIMAN: No further questions.

THE COURT: Thank you very much, Mr. Gant.

(Witness excused.)

3/1 pm

1 dhr

MR. RYAN: Mr. Wallace, please.

D A V I D W. W A L L A C E , called as a witness on behalf of Defendants Bangor Punta Corporation, et al, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RYAN:

Q Mr. Wallace, I want to direct your attention to August, early September 1969. Could you tell us, please during that period of time what cash or credit resources Bangor Punta had available to it for the purchase of Piper securities.

A In the period August '69 we would have had approximately $10,000,000 in cash and $8,000,000 of available credit.

In addition, at that point we had $7,000,000 in marketable securities in our portfolio -- that was stock of the Lenox Company -- and we had $16,000,000 in available cash, Euro- ~~yous~~ dollar cash.

Q In those amounts you just gave us, did you include in there the approximately $9,000,000 that Bangor Punta had spent in May of 1969 when it purchased 120,000 Piper shares in three transactions?

A No, I did not.

Q So that would be an additional nine million would

have been available in August had you not made the purchases in May?

A If we had not made those purchases in May, we'd have had about an additional nine million four, that's right.

Q Do you recall the May 8th agreement, the agreement between Bangor Punta and the Piper family; do you recall that agreement?

A Yes, sir I do.

Q Under that agreement did Bangor Punta have any obligation to acquire Piper's securities?

A Yes.

MR. LIMAN: Objection to the form.

A Bangor Punta had an obligation to obtain 50% of the outstanding stock of Piper Aircraft.

Q And had used its best efforts to acquire?

A That's correct.

Q During the course of 1969 did Bangor Punta acquire any type of securities?

A Yes. Following the close of our exchange offer I instructed First Boston Corporation to acquire additional securities of Piper Aircraft -- that's additional common stock of Piper Aircraft on behalf of Bangor Punta -- and they acquired slightly over a hundred thousand shares.

Q Do you recall what the average price of those shares was, approximately?

A In the high seventies. I think around $78.

Q And they were cash transactions?

A All cash.

Q Mr. Wallace, I am going to direct your attention to another subject and it deals with the participation by yourself and other members and officers and executives of Bangor Punta in the affairs of Piper Aircraft Corporation.

I am going to direct your attention to August 12, 1969, which is the date of the meeting of the Board of Directors of Piper Aircraft Corporation at which you and several other members of Bangor Punta were elected.

Now, prior to August 12, 1969, what connection or what information or what participation did you or any other officer of Bangor Punta have in relation to Piper Aircraft Corporation?

A Well, we were initially approached by First Boston Corporation on behalf of Piper. Then on April 30th, I believe, Mr. John Lushing and myself flew down to Lockhaven, Piper Aircraft's headquarters, and spent time with the operating and financial officers of Piper. In effect doing a due diligence before entering into the May 8th agreement.

THE COURT: Mr. Ryan --

MR. RYAN: Yes, sir?

THE COURT: -- I lost the question and the beginning of the answer.

Could I have that reread, please?

[Question read.]

A Should I go on?

Q Yes.

THE COURT: I am sorry, I did not mean to interrupt you. I thought you had come to a period and I had missed that.

THE WITNESS: I had come to a period but I don't think I finished.

A We also had contact with officers, attorneys and accountants for Piper Aircraft in preparation of the registration statement and exchange offer. Outside ~~Outside~~ of that, no other contacts.

Q And thos ~~this~~, in other words, your testimony is, between April 30, 1969, and August 12, 1969, other than what you have just testified to you, neither you nor any other members of Bangor Punta had anything to do with the management or participation in the management of Piper Aircraft Corporation; is that correct?

A That's correct.

Q What occurred on August 12, 1969, at the Piper board meeting?

A Mr. ~~Robertson~~ Robertson, Mr. Salgo, Mr. Flick and myself ~~wer~~ were elected directors of Piper Aircraft Corporation.

Q Who is Mr. Robertson? Would you please identify who Mr. Robertson is?

A Mr. Robertson at that point was co-chairman of the Bangor Punta Board of Directors; Mr. Salgo was chairman of the Bangor Punta Board of Directors; Mr. Flick was senior vice president and general counsel of Bangor Punta; and I was president of Bangor Punta.

At that time Mr. Flick was also elected secretary of Piper Aircraft Corporation.

Q Were there any other directors elected at that meeting?

A I don't believe so.

Q Do you recall whether Mr. Barnett was elected at that meeting?

A Oh, excuse me. Yes. Mr. Barnett was elected at that meeting.

Q Who was Mr. Barnett?

A Mr. Barnett is a vice president of Chris-Craft Industries.

Q Could you please identify the other members of the

Board of Directors?

A At that time?

Q Yes.

A There was -- there were two other Chris-Craft directors, Lenny Gordon and Jim Rochlis, and I believe Bill Piper.

Q So that you had an eight-man board of directors: Four of the directors were Bangor Punta employees or executives; there were three executives of Chris-Craft, and Mr. William Piper, Jr.; is that correct?

A That's correct.

Q Did there come a time when the composition of the Board changed?

A There came several times. I'm not sure I can give you all the chronology. Mr. Lenny Gordon left the employ of Chris-Craft and was subsequently replaced by Mr. Linowes. Mr. Flick left our employ in January 1970 and was replaced by Mr. Dudley Phillips. Mr. Robertson was replaced by Mr. Martin.

Q Who was Mr. Martin?

A Mr. John Martin is secretary of Bangor Punta Corporation. When Mr. Mergen was elected president and chief executive officer of Piper Aircraft, he was placed on the Board.

Q Were there any other persons elected to the Board of Directors? And I will direct your attention --

A I believe the time that Mr. Mergen was elected, Howard Piper went on.

Q Did there come a time -- I will direct your attention to December 4, 1972 -- when additional members were elected to the Board?

Do you recall whether on December 4, 1972, Mr. Siegal was elected to the Board of Directors?

A Yes. I don't recall the exact date, but Mr. Siegal was elected.

Q Could you tell us, please, what was the composition of the Board at that time?

A Well, at that time it would be Mr. Siegal, Mr. Gordon, I believe was still on the Board, Mr. Barnett, Mr. Rochlis, Mr. Salgo, myself, Mr. Phillips, Mr. Martin, Bill Piper and Joe Mergen, I would believe.

Q And Mr. Rochlis is an executive of Chris-Craft?

A Jim Rochlis is a vice president of Chris-Craft.

Q It is your recollection that at some point in time Mr. Linowes was a director of Chris-Craft and was elected to the Piper Board to replace Mr. Gordon?

A That's correct.

Q Is that the present composition of the Piper Board

of Directors?

A The present composition, yes, that's correct.

Q Did you or any other executive of Bangor Punta occupy any executive position at Piper Aircraft Corporation?

A Mr. Salgo is presently Chairman of the Board of Piper Aircraft. I'm presently chairman of the executive committee. I don't regard those as operating positions.

I'm also an assistant vice president of Piper Aircraft which I became in August of 1969 because our insurance counsel stated if I was not an officer I wouldn't be entitled to listen to some of the problems they were having with the insurance because it wouldn't be a privileged conversation.

Mr. Dudley Phillips is general counsel of Piper and, as I stated earlier, Mr. John Martin, our secretary, is also secretary of Piper Aircraft.

Q Do you or any other executive or employee of Bangor PUnta receive any compensation for the services rendered in those capacities?

A We don't now nor have we ever received any compensation for any of the services I mentioned above.

However, Herb Siegal and I discussed it, I think, several months ago, I don't know exactly how long, and agreed

it would be back in 1973; that because of the amount of time that both Chris-Craft executives and Bangor executives were spending on Piper, that directors' fees should be instituted and directors are now paid an annual fee of $10,000. And we agreed that Bangor Punta's fees should be signed over by the executives themselves directly to the company.

Q Does the Piper Board of Directors meet on a regular basis?

A On a regular and irregular basis. I think there have been 48 meetings of the Board since I became a director in August of 1969.

Q Are there scheduled monthly meetings?

A There are scheduled monthly meetings and then we have special meetings as the situation demands.

Q If some particular emergency arises, then you have a special meeting?

A That's correct.

Q Is attendance at those meetings by directors good?

A Attendance is excellent by any standard.

Q At these Board meetings is it commonplace to have anybody else attend such meetings?

A As a matter of course, the chief executive officer is a member of the Board, but at these meetings we have had

10 dhr Wallace - direct

in attendance from time to time the chief financial officer, the chief marketing and sales officer of the company, various consultants and, where appropriate, other people from the company.

Q Who prepares the agendas for the Board meetings?

A Mr. John Martin, secretary of Piper Aircraft, prepares the agendas, but consults with everyone beforehand.

Q Did you ever have any conversations with Mr. Siegal concerning the agenda?

A I have called Mr. Siegal on occasion concerning the agendas and discussed them with him before they were published.

Q Has there ever been any matters added to the agenda either at the request of Mr. Siegal or at your request?

A Yes. I'm pretty sure.

Q During this period of time, from August 1969 to date, has the Board of Directors of Piper created any committees to assist it in its functions?

A I think the earliest committee we had was a committee concerning pensions, which came about because of the concern of both the Bangor PUnta and the Chris-Craft directors with certain aspects of Piper Aircraft pension program, and a committee was appointed consisting of Mr. Gordon, Mr. Phillips and Mr. William Piper.

Q Have there been frequent meetings of the executive committee?

A I'm talking about the Pension Committee.

Q Excuse me, the Pension Committee.

A We had -- the Pension Committee, since I'm not on it, I don't know how often it's met, but I know there have been meetings.

That committee, I don't think, is in existence today because Mr. Gordon is no longer with us a director, and there came a time when it sort of petered out, and then there were new questions that arose concerning pensions, and a committee of Mr. Barnett, Mr. Phillips and Mr. Stockton were formed.

Q Who is Mr. Stockton?

A He's the chief financial officer of Piper Aircraft.

Other committees that we have had --

Q Has that committee made any reports?

A Yes. Well, the --

Q The pension committee, I'm sorry.

A All these committees --

Q Just slowly. Has the pension committee made any reports?

A Yes.

Q Can you tell us what those reports are?

A The first report -- the pension committee, consisting of Mr. Gordon, Mr. Phillips and Mr. Piper, came back with certain recommendations. The one I recall was a limitation on the top pension; that's the pension paid the most senior officers of the company.

In addition, the company, the present pension committee; I can't give you the dates or anything like that -- have discussed their progress with the Board of Directors.

Q Have there been any reports by the pension committee to the Board of Directors recently?

A Yes, sir.

Q What was the result of the report ? Was it approved or disapproved?

A Generally, the recommendations of the pension committee have been pretty well followed. I think I should -- would want to make clear that there was some disagreement concerning the pensions of Mr. -- both Mr. Pipers, I believe.

Q Has there been a recent report by the pension committee within the past six months?

A Oh, yes. Yes.

Q What was the result of that? Was that unanimously approved?

A Yes, that was unanimously approved.

Q Were there any other committees?

A In 19 -- I don't recall the year exactly -- we did form an executive committee in the event that they could not get the Board together and had some item of business that had to be acted on fairly quickly.

My recollection is that Mr. Mergen, Mr. Piper, Mr. Salgo, myself, and originally Mr. Gordon -- and I now think it's Barnett -- were ~~is~~ on that committee, the executive committee.

Q Does that committee meet very often?

A No, it's -- I can't recall when the last meeting of the executive committee took place. I know there have been meetings. I think about four, but I just can't put a finger on them.

Q Were there any other committees formed by the Board?

A When Mr. Mergen became ill and was not able to function, we formed an operating committee consisting of Larry Barnett, Jim Rochlis from Chris-Craft and Bill Gunn and Steve Galle from Bangor Punta.

Q What was the purpose of the operations committee?

A The purpose of the operating committee was to report back to the Board, but in the meantime also to see

that the company was continuing to function during Mr. Mergen's absence. That committee has since been dissolved.

Q Are there any other committees?

A Yes. There is an audit committee which consists of Mr. Galle and Mr. Linowes.

Q Who is Mr. Galle?

A Mr. Steven Galle is senior vice president of Bangor Punta.

Q What is the function or purpose of the audit committee?

A The function and purpose of the audit committee is the function and purpose I think of all audit committees. ~~I think this audit committee~~ -- that is, to pass upon the work of the independent auditor -- in the case of Piper, Arthur Young -- and, in addition, to look into other areas of the accounting and reporting aspects of the company.

As a result of this, the auditing committee has come up with recommendations, and I can recall specifically one which involved a discussion of the efficiency and capability of the company's data processing work.

Q Were there any other committees, Mr. Wallace?

A Yes. We have had a continual concern in Piper about the costs of our insurance premiums, and a committee of the Board, which is called the insurance committee, was

formed. This committee consists of Mr. Salgo and Mr. Phillips, Mr. Linowes and Mr. Barnett.

Q Has the insurance committee performed any other functions other than investigating the product liability insurance of Piper?

A The insurance committee has looked, I think, into general aspects of Piper's insurance costs, but I think their prime concern has been with product liability premiums, which is the major area of our exposure, and I think have made excellent -- an excellent contribution to the company.

Q Do you recall whether the insurance committee had anything to do with settling ~~of~~ any claims that Piper Aircraft Corporation had on any of its insurance policies?

A Well, at the time of the flood following Hurricane Agnes in 1972, I think the entire Board, including the insurance committee, participated very extensively in these concerns of our claims and our loss and so forth.

I know that both Mr. Liman and yourself were involved in that, and that involved an ultimate settlement with our insurance -- our insuror of a claim, and we received $4,000,000.

I know as a result of the insurance committee we have had extensive outside consulting examinations of

Piper's insurance costs.

Q Are the directors, prior to the Board meetings, furnished with any financial or operating information concerning Piper?

A Yes. Through the normal courses the directors are sent a monthly statement and other financial material that's either requested or deemed pertinent.

Q Well, can you take us back to the early time of the arrangement in the fall of 1969? Do you recall what type of information was furnished to directors at that time, financial information?

A I think the information being furnished in '69 was much less satisfactory or detailed than the information being furnished today.

Q Let me show you Defendant's Exhibit BJ for Identification. Could you please describe that for the record?

A This says, "Financial Statements, December 31, 1969, Unaudited Piper Aircraft."

Q Was that the type of statement that was given to the directors at or about that time, that period of time, October 1969?

A Yes, sir.

Q Did you, as an executive, find that the reporting

or accounting information furnished by Piper at that time was satisfactory to assist you as a director in supervising and policing the operations of Piper?

A The information furnished as a director?

Q Yes.

A No, sir.

Q Since that time, have efforts been made to improve the quality of information furnished to directors?

A Yes, decidedly.

Q Let me show you defendant's Exhibit BK for identification. Could you please identify that and describe it?

A This states, "Piper Aircraft Corporation, Financial Statements, October 31, 1972, Unaudited."

Q Is there a difference betweeen Defendant's Exhibit BK for Identification and BK for Identification?

MR. LIMAN: Other than the years?

MR. RYAN: Other than the years.

MR. LIMAN: I object on the ground the documents speak for themselves. If it is easier that way to put them in evidence, I am not going to object. If you want a description, you can describe the difference. Anything is okay, Mr. Ryan.

MR. RYAN: I think if Mr. Wallace just describes

briefly if there is any improvement or change in the form of information or additional information furnished, to identify the document.

A Well, ~~if~~ we include here a source, an application of funds; and there are some changes I would think in categories.

Q Now, let me show you Defendant's Exhibit BL for Identification.

MR. LIMAN: Can I see what you just showed him?

MR. RYAN: Certainly.

A This is a letter on Piper Aircraft letterhead dated November 29, 1973, addressed, "Board of Directors, Piper Aircraft", and lists enclosures of various financial statements, and then lists the financial statements dated October 31, 1973.

Q Is Defendant's Exhibit BL for Identification the type of monthly statements being given to directors at the present time?

A Yes. This represents the current type of report.

Q Let me show you Defendant's Exhibit BM for Identification and BN for Identification. Would you please describe these and tell us what these are, those exhibits are?

A The first one, which is BM, is headed, "Piper

Fiscal 1974 First Quarter Review and Revised Planning Projections." And there's a date, January 15, 1974.

Q What are they, Mr. Wallace?

A Well, these are generally the expectations of the company for the year, the effect of various things such as the energy crisis and so forth; what is the expected implications for our markets and our operations and problems that we're having and so forth. Things that enter into the financial results and the expected financial results of the company.

Q Those are the reports that are now being given to directors of Piper Aircraft Corporation?

A Yes, sir.

MR. RYAN: I offer in evidence, your Honor, Defendant's Exhibits BJ for Identification, BK for Identification, BL for Identification, BM for Identification.

Q And would you please describe BN for Identification, please.

A BN is much the same as Exhibit BM except it's for the second quarter review and revised planning projections and is dated April 15, 1974.

MR. RYAN: I offer BN in Evidence.

MR. LIMAN: No objection.

[Defendant's Exhibits BJ through BN received

in Evidence.]

THE COURT: Mr. Ryan?

MR. RYAN: Yes, sir?

THE COURT: To what issue before me is this last bit of evidence in this documentary form addressed?

MR. RYAN: These are the exhibits that I just introduced in Evidence, your Honor. This bears upon the fact that the issue, one of the issues here, is the form of the injunction.

The contention, I think, was made at the Appellate level that the Chris-Craft personnel were not kept properly informed of this investment; that in effect Bangor Punta took control and locked them out, and I wanted to be able to establish that this is the type of financial information that is readily available to directors and the members of the Board.

Q Mr. Wallace, during the course of the Board meetings that occurred at Piper Aircraft since 1969, have matters come up before the Board which, in your opinion, would be matters that in normal busines corporations in your experience would not have been considered at Board level?

A I think that's absolutely correct.

Q Could you please describe some of those

illustrations that you have in mind?

A Well, we function, I think as a board more as an operating committee, in addition to being a board. We don't abdicate our board duties, but in addition I think get far deeper into operations than is a normal board function.

We discuss such items in depth as inventory, new model -- new models, engineering work, engineering research work; we discussed personnel matters that I think go deeper than is normal, such items as improving -- as --

Q Keep your voice up, please.

A -- such items as bringing up consultants to improve productivity of the company, items of this sort which I think get more into what an operating committee would discuss than a Board of Directors under more normal circumstances.

Q Do you recall any discussions, for example, concerning the Enforcer Program?

A The Enforcer Program --

Q Yes or no.

A Yes.

Q Do you consider that a subject which would properly have been a management subject which would properly have been a management subject?

A I think it was gone into in depth far greater than would have been normal. I think a mention of it would have been part of the Board.

Q Would you please tell us what the Enforcer Program was?

A The Enforcer Program was a program to build a single engine Military aircraft, a shell airplane for sale to the Military. I think that that would have required mention at the Board because Piper in the past has not engaged in the building of aircraft for the Military.

But we discussed in great detail contractual arrangements between the original receivers or owners of the rights of this aircraft, the costs of building, the expenses we would incur in our research and development and so forth and so on.

I think all this is very good. Incidentally, I think the input of all the directors gave us a better program in the long run, but we did spend a good bit of time on it.

Q Do you recall any discussions at the Board concerning the strike that took place at Lockhaven in the winter of 1970 - 1972?

A Well, we had a strike in the Lockhaven plant at Piper Aircraft beginning in November of 1971, and lasting

through the early part of '72. Beginning in the early fall of '71, the Board was apprised of what was happening, and the Board was continually apprised of developments.

As that strike went on we discussed in great detail the demands of the union. Again, I think in far greater detail than in a normal board.

The company employed an outside consultant by the name of Patton, and we had him come, as I recollect, to one Board meeting and address the Board concerning certain aspects of the Union's demands.

The Board was given copies of the union agreement and so forth and so on, and we did continually discuss that strike until its ultimate resolution in a settlement in early 1972.

Q You mentioned earlier, Mr. Wallace, that there was also discussions of the utilization of consultants by Piper Aircraft. Do you recall any specific discussions concerning consultants?

A Yes.

Q Use of consultants?

A Following the Hurricane Agnes and the rather devastating flood sustained at Lockhaven, Herb Siegal in particular was concerned about the quantity and quality of Piper's insurance coverage, and I think largely as

a result of Herb's diligence we did employ Ebasco Services to look over our general insurance. And I think great improvement was made there.

Now, the Board, as I said earlier, has been particularly concerned with the high cost of product liability insurance premiums, and so the insurance committee started to get into this. We normally had Frank B. Hall as our insurance broker, but I believe again at either Larry Barnett or Herb Siegal's suggestion we did have Johnson & Higgins at one point look at it, and we also had Shiff-Terhune.

I should say that Shiff-Terhune has made some outstanding recommendations, and as result I think it's pretty well unanimous that Piper will use Shiff-Terhune, in which I believe Lenny Gordon's family has an interest, as their broker from now on. I don't know if that's germane but --

Q Was Shiff-Terhune introduced to Piper through Chris-Craft?

A Yes, sir. In addition, we had considerable question about the productivity and the quality of supervision at the Lockhaven plant, and at the -- again at the suggestion of Chris-Craft directors we hired a management consulting firm known as MOI to work with us

in Lockhaven and the two satellite plants in Pennsylvania to improve productivity and supervision ability or capability in Lockhaven.

When Mr. Mergen resigned, at Mr. Siegel's ~~Siegal's~~ suggestion, we had Mr. John DeLorean, a former senior executive of General Motors, who sits on the Chris-Craft Board and who is now a consultant, help us define a profile for the new president of Chris-Craft.

Q Did you mention --

MR. LIMAN: Your Honor, if you do not mind, if we could correct the record now, I do not think that you were trying to find a new president of Chris-Craft. I think you meant Piper.

THE WITNESS: Excuse me, Piper Aircraft.

MR. LIMAN: You might have Chris-Craft in mind.

THE WITNESS: I'm sorry, Arthur. I should apologize to Herb, not you.

THE COURT: Is that a Freudian slip?

THE WITNESS: Hardly.

Q Do you recall who recommended MOI to Piper Aircraft?

A It might have been Herb Siegal or Harry Barnett, but it was one of the Piper directors.

Q Were there any other consultants hired to assist

Piper in the operating problems it had ?

A Well, I mentioned Ebasco, Mr. Patton.

Q Do you recall any problems they had concerning their data processing capabilities?

A Yes, but that's no -- I'm sorry, I have consulted now the financial people. I don't consider that operation, that's financial.

We all had some concern about the efficiency of the data processing operation, and at the suggestion of the audit committee we decided to have the matter looked into, and Mr. Linowes' firm was hired to do this work, and they did an excellent job.

Q Now, you mentioned earlier in your testimony Hurricane Agnes. Could you please describe for us what you meant by that?

A Hurricane Agnes, which occurred, I believe, in early June of 1972, resulted in a very severe flood in Lockhaven and in fact in the whole Susquehanna Valley, and the greater part of the Lockhaven plant was under eleven feet of water as a result of all of this, and we suffered tremendous damage, perhaps more damage than would have been normal because we were just recovering from the strike that I mentioned earlier.

And there was a buildup of aircraft and we had

some inclement weather for several weeks before the flood hit, so we had a lot of finished aircraft sitting on the field when the flood struck.

Q Do you recall approximately how many aircraft?

A Say -- I'm going to guess, but it will be over fifty.

Q Well, would it have been closer to 120?

A I would believe that more than the 50.

Q Do you recall approximately the total amount of the damages suffered by Piper Aircraft as a result of Hurricane Agnes?

A That's hard to put a figure on for me, but I know it would have to be well over $20,000,000.

MR. LIMAN: Was that before or after taxes?

THE WITNESS: That would be a before tax figure.

Q As a result of Hurricane Agnes, was it necessary to obtain any additional financing for Piper Aircraft Corporation?

A Yes. As a result of Hurricane Agnes, we faced a very severe cash problem, and without additional financing I doubt that the company could have continued in its present form.

We were very fortunate, and here again the entire board, particularly Mr. Salgo and Mr. Siegal, because

of contacts they had in Pennsylvania and elsewhere, were very helpful to us, and we ~~were~~ secured a $12,000,000 SBA loan with a 1% interest rate.

Q Does the SBA loan have any restrictions upon Piper Aircraft Corporation's use of its funds?

A Well, it has a restriction in it that inhibits the payment of dividends without appropriate payment on the principle loan.

Q Could you tell us what the rate of interest on that was?

A I said before 1%.

Q Do you recall approximately how long the Lockhaven plant was out of business before it started in production again after Hurricane Agnes?

A Well, it was after several months. I can't give the exact dates, but that's a misleading statement on my part because we got back going again but it was a long time before, and still even now, I think we're feeling some of the after effects of that flood in terms of dislocation of inventory and problems of tooling and so forth and so on.

Q Do you recall any discussions at the Board meetings concerning moving part of the production of Piper Aircraft to the Lakeland facility?

A Yes.

Q Could you tell us, please, briefly, what you recall of those discussions?

A As you know, Piper Aircraft, when we became Board members on August 12, 1969, had a large plant about 160,000 square feet in Lakeland, Florida. This plant had never been used. It originally was built by Piper for the production of the Pocono, an airplane that the Board, I think, all agreed should not be gone forward with; and basically the problem with Piper is that all the Twins that are built up in Lockhaven, and the single-engines in Vero Beach, the twin-engine is the most profitable part of the line. As a result, ~~Also, because of that that part or~~ all of our twin-engine eggs, so to speak, were in one basket and ~~are~~ susceptible ~~of this~~ to floods; ~~flood,~~ and also made us very vulnerable to the union at Lockhaven, because they knew when they shut Lockhaven down in a strike they had the company in a bad position for negotiations.

We decided to try to build up twin-engine production elsewhere. We had this plant, and we discussed with the Board starting up Navaho production in Lakeland.

Q Do you recall any discussions concerning any major new products? And I will direct your attention specifically to the Cheyenne.

A Yes.

Q Would you please describe the Cheyenne?

A The Cheyenne will be the largest in terms of dollars and in terms of capability of all the Piper airplanes. It will be a turboprop twin-engine airplane much along the configuration of the Navaho, but powered by Pratt & Whitney engines.

We had a full presentation by both Mr. Gillespie, who is the senior vice president of marketing and sales, and Mr. Mergen on that program, and before embarking on it it was unanimously approved by the Board.

Q Subsequent to August 1969, Mr. Wallace, have you ever had any discussions with any third party who would be interested or expressed interest in purchasing the Bangor Punta block of Piper securities?

A Bangor Punta alone?

Q Yes.

A No.

Q Did you ever have any discussions with anyone concerning buying Bangor Punta or Chris-Craft's block or both?

A Chris-Craft alone, the answer would be no, and it wouldn't be my place, anyway; but in terms of acquiring the blocks of both parties, the answer is yes.

Q Have there ever been any discussions concerning any specific prices to be paid to you or Chris-Craft or both in your presence?

A Not in my presence.

Q Since the spring of 1973 have you had any conversations with Mr. Siegal where he indicated to you what his plans were in the event that he received an injunction which would bar Bangor Punta from floating its Piper shares, the 14%, for all purposes?

A Well, Mr. Siegal has made statements as to the fact that he would be taking over the management and also the ability to consider mergers or changes in capitalization and so forth.

Q And thereby dillute Bangor Punta's position below 50%?

MR. LIMAN: Objection unless that is what Mr. Siegal said.

THE COURT: That is leading.

What did he say?

Q What did he say?

A I don't think I could recall Mr. Siegal saying ~~dillute~~ dilute Bangor, no.

Q Do you recall, as the best of your recollection, what his specific conversations were?

A We've had discussions -- these have come up in context with discussions concerning things like, oh, some of these before ~~the~~ spring of '73, but American Aviation subsequent to that, general statements about what could be done to solve this dilemma which could involve changes in the capitalization of the company.

Q Mr. Wallace, I have no further questions.

MR. RYAN: Your Honor, I would like to mark for Identification and offer into evidence -- I do not think there is a question as to authenticity -- defendant's Exhibit BO for Identification, which is a copy of the current bylaws.

MR. LIMAN: I have no objection. I would like to look at them.

MR. RYAN: Yes.

MR. LIMAN: How late are we going to go? Because it may be easier not to go through the marking of your documents now if I could try to finish Mr. Wallace today.

MR. RYAN: Fine.

MR. LIMAN: I cannot do it, your Honor, in all honesty, in a half hour. I do not know what the other plans were.

THE COURT: Can you do it in three hours?

MR. LIMAN: Absolutely.

THE COURT: Take three hours.

MR. LIMAN: Thank you.

MR. ARNING: While we have got a ~~policy~~ moment, your Honor, I am not sure we have had Defendant's Exhibit BI, the Goldman, Sachs report, admitted into Evidence.

THE COURT: All of the reports are received on the same level. Defendants and plaintiffs are received, to be treated to the rules of law and as extensions of or repetitions of the statements of the witnesses.

Just hold it a minute, Mr. Liman.

[Discussion off the record.]

MR. LIMAN: I would like to mark a document that is dated --

THE COURT: Consider it deemed marked. You will do all your marking later.

MR. LIMAN: Just so I could identify it for the record, it is September 24, 1969; it is Bangor Punta's 9-month report to its shareholders.

CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Wallace, is this report which Bangor PUnta issued to its shareholders?

A Yes, sir.

Q If you will look at --

THE COURT: What is the next number that is marked as?

THE CLERK: 166.

THE COURT: Just put it on in pencil and refer to it that way and give it to the Clerk later.

MR. LIMAN: Can I have something red?

THE COURT: Put it on the inside.

MR. LIMAN: I have it here, 166.

[Plaintiff's Exhibit 166 deemed marked for Identification.]

Q If I show you the last page, Mr. Wallace, is it a fact that in this report dated September 24, 1969, Bangor Punta stated that "The acquisition of control of Piper is one of the most significant events in Bangor Punta's nine-year history"?

A Yes, it says that.

Q And at the time that statement was made it was true?

A I think we may have thought it was true but it wasn't true.

Q Well, in another sentence, "It's been one of the most significant events in our history." Hasn't it?

A Absolutely full agreement, Mr. Liman.

Q At the time you issued this statement you had already spent your money for your cash purchases of Piper; am I correct?

A Yes, that's dated September --

Q What was the carrying cost of Piper on your books?

A Well, you would have to add the cost of the debentures, the cost of our John Hancock loan. I would say that that cost would come to somewhere around $10,000,000 on an annual basis.

Q You mean in interest charges?

A In interest charges.

Q You actually carried the investment on your books at over $60,000,000?

A At that point we were showing it at, I think, sixty, seventy million dollars, yes.

Q I believe you said, at the time you made the acquisition, at the time you issued this report, that this was a very, very favorable acquisition to your company.

A We said it was a favorable event, yes.

Q You in fact set out to get control of Piper in May of 1969; is that fair to say?

A I think that's a fair statement, yes.

Q Do you remember stating in your 13(d) that the purpose of your entering into the arrangements with the

Pipers was to obtain control of the Piper Corporation?

A If I could see it -- I haven't seen the 13(d) in five years. If I could look at it now. I'm sure you're right.

MR. LIMAN: We will give the next exhibit number what?

THE CLERK: 167.

[Plaintiff's Exhibit 167 deemed marked for Identification.]

Q I direct your attention to the page headed, "Purpose of transaction, Bangor Punta's Desire to Acquire Control of Piper."

That is fair to say?

A Yes. We put that in our 13(d); that is certainly correct.

Q Well, you remember it, don't you?

A When I read it, I do, yes.

Q And you remember that that was your purpose?

A Oh, yes. I didn't remember what was in the 13(d). No question about what our purpose was.

Q I was not clear from the testimony on direct about your knowledge of Piper before August of 1969. You testified that just prior to entering into the May agreement you had a meeting at Piper with Mr. Lushing and others;

is that correct?

A Well, Mr. Lushing, who is an employee of Bangor Punta, a vice president in Mr. Galle's department, and I went down to Lockhaven, that's correct, and we met with various financial and operating people of Piper Aircraft at that time.

Q In addition, you had taken a look at Piper earlier when First Boston first brought them to you in the end of January or February; am I correct?

A We saw information such as annual reports, proxy statements, studies that were done by our own internal people, I believe. I think we had seen the Dixon Spies' report, that sort of thing.

Q You had been engaged in acquisitions before Piper; am I correct?

A Me personally or Bangor Punta?

Q YOur company, Bangor Punta.

A Bangor Punta had made acquisitions prior to Piper, yes, sir.

Q And you and Mr. Salgo made an effort to be careful in terms of what companies you would seek control of?

A We considered any company very carefully before acquiring ~~any~~ it ~~company~~, yes.

Q You did not make an exception in the case of Piper?

A Certainly not.

Q You had great hope for the light aircraft industry; is that correct?

A You are correct.

Q You felt that Piper Aircraft Corporation was one of three games in town, so to speak?

A Well, I felt -- yes.

Q Those were words that were used, weren't they?

A I don't recall them, but I could well have said that.

Q Do you recall that you thought that the Piper brand name was a very significant name?

A I thought and still think that the Piper brand name is a very significant name.

Q And that the Piper distribution system was something that could not be duplicated except at a cost of an extraordinary amount of money.

A I think the Piper distribution -- I thought the Piper distribution system had value.

Q You concluded that, in proceeding with the Piper acquisition at the costs that were involved in that period of time, this was in the best interests of your corporation, Bangor Punta; is that fair to say?

A That's fair to say.

Q And that you were not throwing away your money.

A That we were proceeding wisely, yes.

Q And you were not after Piper in order to get your hands on any hidden reserves of cash there; that's fair to say?

A Well, I knew there were no hidden reserves because you only had to look at Piper's earlier financials, the fiscal years from '66 onward, and you knew that they had a negative cash flow.

Q And you also were not seeking personal perquisites such as limousines or things like that?

A No, sir.

Q This was as a business proposition, you considered this to be a sound transaction?

A At the time we entered into it, yes, sir.

Q Is it also fair to say that your purpose was not simply to apply your multiple to the Piper multiple.

A I don't remember at this point the multiple of Bangor and the multiple of Piper, whether Piper was higher or Bangor was higher, I just don't recall at this moment.

Q You felt that Piper, in its own right, would command a substantial multiple; is that fair to say?

A I don't think I was thinking in terms of multiples personally. I'm now talking personally, not representing

Bangor Punta. I think I was thinking in terms of the general aviation industry being an attractive industry for Bangor to invest in.

We had looked at Cessna prior to that time. And when First Boston and the Piper management invited us to make an investment in Piper Aircraft, we felt it was a good industry for Bangor Punta to be in.

Q I will direct your attention, Mr. Wallace, to a shareholder's letter dated September 2, 1969, which I will mark as Exhibit 168.

[Plaintiff's Exhibit 168 deemed marked for Identification.]

Q Do you remember that this was sent out after the first decision by the Second Circuit in this case?

A This was -- this is a letter dated December 2nd, sent by Bangor Punta and signed by myself, Mr. Salgo, Mr. Robertson, yes.

Q Do you recall making the statement in that letter at Page 2 that, "Bangor PUnta has working control of Piper with the full cooperation and assistance of the Piper management"?

A Yes, I recall this statement.

Q Was it true?

A I think we believed it to be true. I don't believe

it true today.

Q You do not believe that the management of Piper was then cooperating with you?

A In some respects, no.

Q Was it your practice to describe Piper as one of Bangor Punta's operating companies?

A We have described Piper in our annual reports as part of our operations, but I regard our interest today in Piper as more of an involuntary partnership with Chris-Craft.

Q Well, I am not asking about today now. Let us go back to 1969, and I will show you a document I am marking as 169, which is a letter dated December 4, 1969, from you, Mr. Wallace, to Leonard Gordon.

[Plaintiff's Exhibit 169 deemed marked for Identification.]

Q You refer to Mr. Feitz. Is that how he pronounced his name, F-e-i-t-z?

A I think that is how it is pronounced, yes.

Q I will direct your attention to your statement in the letter.

"As you have stated, Mr. Feitz has been engaged by Bangor Punta. But you also know this decision was in no way based on any factor other than Bangor Punta's

continuing desire to provide the best possible products to the public, whether at Piper Aircraft or any of its other operating companies. The management teams of all Bangor Punta companies aspire to this goal."

You sent this letter to the vice president of Chris-Craft?

A Yes, sir.

Q Before the August 1969 meeting, at which you were elected a director, had you made arrangements with members of the Piper family and their associates that they would vacate the seats so that you could take them?

A I don't recollect what the arrangements were, but there were some mechanics by which we got seated.

Q It did not happen just spontaneously at the meeting?

A Oh, no.

Q You, therefore, had some kind of agreement with Mr. Piper or somebody in the Piper family that you would place your representatives on the Board; am I correct?

A I would believe this would have been worked out by Mr. Flick.

Q Of your company?

A Who was general counsel of Bangor Punta.

Q Do you recall that at that time Bangor Punta

advised Chris-Craft that they would give Chris-Craft another seat on the Board?

A I think we said we would support another seat for Chris-Craft.

Q And it is fair to say that on that eight-man board in August Chris-Craft had three employees after the meeting; it started with two and they were given a third?

A Yes.

THE COURT: What year?

MR. LIMAN: 1969.

A Yes, that's correct, Mr. Liman.

Q Then in March of 1970, Mr. Flick had resigned from your company and so he was replaced on the Piper board by Mr. Phillips; am I correct?

A Mr. Flick left Bangor in January 1970, and shortly thereafter Mr. Phillips replaced him. I don't know the exact date.

Q Do you recall that on September 8th, 1970, at a meeting of the Piper Board of Directors, the Board was increased from eight seats to nine seats?

A I recall meetings where the size of the Board was changed, yes. If I could see the minutes, it would help me.

MR. LIMAN: Have you offered all the minutes or will you offer all the minutes in Evidence, Mr. Ryan?

MR. RYAN: Yes, that is correct. I was going to do that.

Q Here.

THE COURT: Is that the meeting of October 15th?

MR. LIMAN: I am sorry, your Honor, September --

THE WITNESS: September 8th.

THE COURT: September 8th. Yes, September 8th.

MR. RYAN: What year?

MR. LIMAN: 1970.

Q The question was, Mr. Wallace, whether you recall that the board was increased from 8 to 9 seats?

A Yes, I do now.

Q Do you recall that that was done over the objection of the Chris-Craft representative, Mr. Gordon?

A I read it here and I recall it.

Q Do you recall that over his objection Mr. Mergen was put on the board?

A Yes, I do.

Q Would you say, Mr. Wallace, the most important function of the board of directors is the selection of management?

A No. I think the most important function of the board is monitoring management and removing them when they are not performing. That's a little different than selection.

Q In fact, was Mr. Mergen appointed president of the company at this meeting?

A Yes, he was.

Q Was that over the objection of the Chris-Craft representative?

A I will look and see.

(Pause.)

A Yes. Mr. Gordon opposed it.

Q Do you recall whether Mr. Gordon said to you that he did not think that Mr. Mergen was a strong enough man for this position?

A I recall Mr. Gordon said he didn't know enough about Mr. Mergen.

Q Had you interviewed Mr. Mergen before he was originally interviewed by Piper?

A Yes. I met Mr. Mergen before he was hired as vice president of operations. That's correct.

Q That was in or about October of 1969?

A If that's what the record shows, that's what it is.

Q Did anybody else at Bangor Punta interview him before he was appointed?

A I don't recall. I would assume that others would have met Mr. Mergen, yes.

Q Do you recall that at the meeting he was appointed Mr. Gordon, as vice president, said he didn't know enough about Mr. Mergen to vote and abstained?

A I believe that would be correct. I have to see the minutes again.

Q I show you the November 6, 1969 minutes. Mr. Gordon stated that he appreciated the work that had been done in connection with the reorganization, referring to

the engagement of various officers, but because of lack of knowledge he and Mr. Rochlis would abstain from voting on the aforementioned resolutions.

That's from the minutes of November 6, 1969.

A Yes.

Q Does that refresh your recollection that Mr. Gordon stated that neither he nor his colleague from Chris-Craft knew enough about Mr. Mergen to vote for him?

A Yes.

Q Does that refresh your recollection that when it was proposed that Mr. Mergen be promoted to the presidency in 1970 that Mr. Gordon at that point said he didn't think he was strong enough?

A I think that's correct now, yes. I agree with you. I was thinking of the earlier meeting. Yes.

Q Over Mr. Gordon's negative vote he was elected president?

A Correct.

Q Do you recall that after this meeting at which Mr. Mergen was put on the board and the board was enlarged to 9 that Bangor Punta proposed that at the next meeting there by a 10-man slate for the annual meeting consisting of three representatives of Chris-Craft, Messrs. Phillips, Salgo, Wallace and Robertson, who

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were directors of Bangor Punta, and Mr. Mergen and the two Piper brothers? Do you remember that?

A Yes, sir.

Q Do you remember that over the objections of Mr. Gordon and Mr. Barnett, who attended that meeting, the amendment to the by-laws was adopted fixing the board at 10 and proposing a management slate of the names that I just mentioned?

A Yes. I don't recollect how Mr. Gordon and Mr. Barnett voted, but I believe they voted as you said. If I looked at the minutes I could answer that.

Q Maybe I could help refresh you.

A I'm sure they did. It is hard for me.

Q Maybe the next question will refresh your recollection so I won't have to give you the minutes. The minutes will speak for themselves.

Do you recall receiving some expression of indignation from Mr. Gordon that with some 42 per cent of the stock of Piper, and cumulative voting, Chris-Craft was being offered three out of ten directors? Do you remember that at all?

A I know they made remarks about how many directors they should have, yes.

Q Do you remember Mr. Gordon saying that if you fix

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the board at 10 they are entitled to 4 directors? Do you recall that?

A No.

(Plaintiff's Exhibit 170-D was marked for identification.)

THE COURT: I have read all of those minutes.

MR. LIMAN: This is not a minute, your Honor.

THE COURT: I have read all of the mintues. You can go on the assumption I know what is in them.

Q Would you look at Plaintiff's Exhibit 170 and tell me whether or not you recall receiving that letter from Mr. Gordon?

A Yes. I recall this letter.

Q Do you recall that after Mr. Gordon insisted that he had a right to four out of ten that Bangor Punta proposed that the board be reduced to nine and that they would elect five Bangor Punta officers or directors and Chris-Craft could have four?

A I don't recall.

You have a way of helping me --

Q I will not go over the minutes.

A If you tell me it happened in the minutes I will believe you.

MR. LIMAN: I will mark this as Plaintiff's

Exhibit 171, a letter dated November 17, 1970 from Mr. Wallace to Mr. Gordon.

(Plaintiff's Exhibit 171 was marked for identification.)

Q Do you recall writing that letter to Mr. Gordon?

A Yes.

Q Let me ask you if you will go back in time to 1970. The Piper family as a group were your largest shareolders at Bangor Punta; am I correct?

A If you took the whole, all the different members of the family as a single group, that would be the largest single ownership.

Q Without casting aspersions on them, the fact is that they made demands upon you that both Howard and Bill Piper be put on the board; is that correct?

A If you are referring to this period of time, I think that the concern was on the part of Bill Piper that he stay on the board, and Bill was very anxious to have Pug on the board.

Q Did they or other members of the family request Bangor Punta to put both of them on the Piper board?

A I have never discussed the composition of the Piper board with any member of the Piper family except Bill or Pug Piper.

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Q Who requested that Pug be put on the slate?

A I believe that was Bill Piper.

Q Do you remember what Bill Piper said?

A I think Bill Piper was putting his emphasis on the fact that there should not only be representation on the Piper board of Bangor Punta and Chris Craft but representation of the operating management because ~~they~~ there ~~were~~ was still a public ownership in Piper Aircraft.

Q Didn't Bill Piper write to you describing himself as associated with Bangor Punta?

A He may have. I don't recollect. If you say so he did.

Q There was a good deal of hostility in that period between the Piper family and Chris-Craft?

A If you say so.

Q Don't you know, Mr. Wallace? You observed it.

A I think that the Piper family may or may not. I think with Bill Piper and Pug Piper, there was hostility. I don't know what these other members of the family -- I have never met most of the members of the Piper family.

MR. LIMAN: I ask that this be marked as the next exhibit.

(Plaintiff's Exhibit 172 was marked for identification.)

Q This is a letter from Mr. W.T. Piper, Jr., who is tne Bill Piper we are talking about. Do you recall that (indicating)?

A Obviously it is addressed to me. Let me look at it.

Q Is it a letter you received from Mr. Piper?

A Yes.

Q Attached to it is your response, sir. You can identify the response because I am going to offer that in evidence at the appropriate time.

A It is a response stating I will give this matter to the board of directors.

Q Was it you, Mr. Wallace, who promoted Mr. Stickley at Piper in 1970 to his position?

A I recall Gene Stickley. I don't recall that I promoted him.

Q Did you assign him to certain responsibilities that would include safety programming?

A In connection with what I felt was the poor handling of the prior safety programs I had made considerable effort with the management of Piper to get some improvement in our safety program and our ways of handling it, and I believe Gene Stickley was assigned to that job.

Q Did you pick him? That's all the question is.

A I don't know whether I picked him. I know I had a very good opinion of him.

Q I show you Exhibit 173, which is a letter dated February 20, 1970 from Mr. Salgo to Mr. Gordon stating Mr. Wallace picked for this job Mr. Eugene Stickley who also has the job of corporate planning. Was that true?

A No. I would say I nominated him. I don't think I had the power to pick him. If the president of Piper had disagreed, I am sure there would have been another man chosen.

Q The president of Piper at that time was Bill Piper, wasn't he?

A I believe so.

Q Mr. Piper was opposed to this whole notion of retrofitting and the program that you were talking about, wasn't he?

A May I read the letter so I know what I am answering?

Q Surely.

A (Pause.) I don't think this was limited to the retrofit program. That would have been part of the responsibility though.

Q You testified on direct examination that in the early period of 1969, when you went on the board, the

information distributed to directors was, in your opinion, not adequate. Is that a fair statement?

A That's correct.

Q Did you mean to suggest that the only information that you were receiving during the period after you went on the board was the information being distributed to all directors?

A Heavens no. I called people in Piper on the telephone numerous occasions. I visited the plants. I attended air shows and things of that nature.

Q Did Piper representatives attend meetings at Bangor Punta?

A Yes. There were meetings that they attended.

Q Were you at Bangor Punta organized in terms of finance department and various divisions?

A In the headquarters we have a finance department and legal department.

Q Did the Piper financial people report to the Bangor Punta financial people?

A No.

Q Did the Bangor Punta --

A Excuse me. They didn't report. They may have conversed with them but not report.

Q When you say "may have conversed with them,"

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did they send them information between board meetings?

A I would assume if they had a question they would have received information.

Q Did you assign anybody at Bangor Punta the responsibility of overseeing the financial operation at Piper?

A Not specifically.

Q Was Mr. Galle assigned any responsibility?

A Mr. Galle is in charge of all financial information analysis and so forth. He is the chief financial officer of Bangor Punta and as chief financial officer of Bangor Punta he would also have the responsibility for following Piper Aircraft.

Q Did youhave divisional meetings at Bangor Punta at which the heads of the various divisions came in?

A On occasion we did.

Q Was there a procedure for your divisions to submit operation projections to headquarters and budgets?

A Yes.

Q Was there a procedure at headquarters for reviewing the budgets and projections?

A Absolutely.

Q Did Piper submit projections and budgets to you in 1969?

A They did not follow our chart of accounts, our normal projecting or budgeting procedures. They followed their own and we would get what they had and try to get it into our own system -- but they didn't change their system for us.

Q Was this information additional to what was then being provided to directors?

A Some of it may. Since we were talking to them we may have had more information but any director could have called.

Q Is it your position, Mr. Wallace, that you had no more influence over ~~Pier's~~ Piper's conduct prior to the recent Second Circuit decision than Chris-Craft?

A No, not at all.

Q It is not at all your position?

A No.

Q In fact, many of the cooperative ventures that Mr. Ryan spoke of have taken place since the Second Circuit decision in 1973? Is that a fair thing to say?

A That's fair to say, yes.

Q After the Second Circuit decision an operating committee was created?

A Not because of that but afterwards.

Q After the Second Circuit decision Mr. Linowes'

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firm performed the work that it did on your computer system?

A Again, it happened after the Second Circuit decision. I don't know when Mr. Linowes went on our board. I don't know when in the progression the question ~~came up~~ came up on the firm's work.

Q You agree that Mr. Linowes' firm made a substantial contribution in terms of proposing economies in the computer system?

A I believe his firm made a contribution and Mr. Linowes had made a contribution as a board member.

Q You also believe that the Schiff-Terhune firm, as you say, has made a contribution in terms of insurance planning?

A I believe they made a substantial contribution.

Q That occurred after the Second Circuit decision?

A Yes.

Q You mentioned -- and I would like the record to be clear because Leonard Gordon is an attorney -- that the firm is one that is family connected. Do you mean that it is a firm that was headed by the deceased husband of his present wife? You are not suggesting that he has any financial interest in this firm?

A I read it in your proxy statement. There was some kind of --

Q You don't recall that is what it was?

A If that is what it is.

Q The adopted children of beneficiaries under the will, but -- all right.

THE COURT: I suppose that is very important on the valuation problem, but it escapes me.

Q Mr. De Lorean was appointed after the Second Circuit decision?

A As a result of Mr. Mergen's resignation, which occurred after that decision.

Q And the MOI firm was brought in after the Second Circuit decision?

A Because I think inefficiences arose because of the flood.

Q Mr. Siegel proposed it and it was brought in after the Second Circuit decision?

A Yes.

Q Mr. Wallace, would it be fair to say that your attitude towards your Chris-Craft directors has been affected by the decision of the Second Circuit?

A In part.

Q Still, even after the decision, there have been disagreements between the Chris-Craft people and Bangor Punta, am I correct?

A Like all boards, yes.

Q Well, Chris-Craft did not want Mr. Gunne to be president of Piper after Mr. Mergen stepped down?

A That's correct.

Q Mr. Gunne was formerly the head of your gun business?

A Mr. Gunne was formerly the chief executive officer of Smith & Wesson, yes.

Q He was voted in over Chris-Craft's objection?

A That's correct.

Q Chris-Craft also did not want to continue Arthur Young as the auditors; is that correct?

A That's correct.

Q And there have been other disagreements that are reflected in the minutes between Chris-Craft and Bangor Punta; am I correct?

A That's absolutely correct.

Q Is it also fair to say that the minutes, even though the lawyers looked them over, do not constitute a complete summary of all of the discussion?

A Well, they are a lot more complete than any other minutes I have seen. These minutes, as you know, are gone over by you and Mr. Ryan and everybody on the board.

Q Are there differences that you have perceived

between you and Mr. Siegel in philosophy towards the operations of Piper?

A Yes. There are philosophical differences.

Q Mr. Siegel, it would be fair to say, has a great pre-occupation with the inventory at Piper?

A He discusses the inventory a good bit, yes.

Q He feels strongly that it should be reduced, perhaps even at the expense of production and ultimate sales?

A At the expense of earnings and sales and production, yes.

Q He has expressed the view that it is more important to protect Piper on the down side now than to try to squeeze some extra earnings by allowing the plant to continue to run at the present pace and inventory to continue?

A Yes.

THE COURT: With respect to this business of directors' fees for $10,000 a year, when did that come up?

THE WITNESS: That came up, I think, nine months ago. It must be in the minutes. It came up at a board meeting.

Q It came up in September of 1973, did it not? Do you remember that?

A I think that's nine months ago.

THE COURT: It doesn't sound like an austerity program, does it?

Q Do you remember, Mr. Wallace, that at that time there had been a substantial amount of expense incurred by Chris-Craft and Bangor Punta in pursuing the claim against the flood insurer?

A The reason that -- when the idea --

THE COURT: Just answer the question.

Was that at a point in time when there was a flood insurance problem?

THE WITNESS: Yes.

Q Did Mr. Siegel say to you that Chris-Craft was now incurring legal fees on behalf of Piper for which it was not getting reimbursed?

A He may have said that. I'm hazy on it.

Q Did you say to him that you were incurring other expenses as well as on behalf of Piper?

A He said that and I think he probably did. Then I probably said what you just said.

Q Was it agreed that in lieu of he reimbursing the company for the expenses being incurred at this point on behalf of Piper, that the directors would be given the $10,000 a year which would be remitted to each of the

companies?

A Yes.

Q And the money that was paid to the Bangor Punta directors go to Bango Punta, you testified, am I correct?

A Yes.

Q And the moneys that were paid to the Chris-Craft directors go to Chris-Craft?

A Yes.

Q And the expenses that are being incurred are in excess of fees that are being paid?

A Ours are.

Q Does Mr. Gunn report to you with some regularity about Piper today?

A Yes.

Q Mr. Ryan asked you about the type of matters that come before the board, and one of them was the ~~enforcement~~ Enforcer program.

A Yes.

Q That was a program in which Piper incurred a very substantial loss?

A Incurred substantial expenses as we went along in the program -- I think around $1 million.

Q Mr. Gordon, when it was initially presented, was in opposition to that?

A At the initial presentation, yes.

Q The minutes refer to place of meeting prior to the Second Circuit decision in almost all instance as being in Greenwich, Connecticut. Were they held at BangorPunta's office in Greenwich?

A Yes, sir.

Q Then there is a reference to some meetings being held before the decision at 4 East 76th Street. What is that?

A That would be 4 East 72nd Street.

Q I'm sorry.

A That would be Mr. Salgo's apartment.

Q And 405 Park in the early period.

A That would be the office of Bangor Punta before we moved to Greenwich.

Q Then there was a meeting which I believe to be the annual organizational meeting in 1971 that was held in Florida.

Do you remember that?

A Yes. We held one in the Piper plant at Vero Beach.

Q Did Bangor Punta hold its annual meeting in Florida that year?

A No.

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Q You said, if I understand you correctly, that Mr. Siegel was talking about some changes in the capitalization to allow both of you to be extricated; is that whatyou said?

A No. I said from time to time Mr. ~~Siegal~~ Siegel had mentioned -- Iknow at one time we had a discussion about it -- I think he got some complicated mergers of Chris-Craft and Bangor Punta into Piper, and there was something, too, in connection with American Aviation, which was an aviation company later acquired by Grumann, where we were talking about acquiring that, issuing securities, and so forth and so on.

Q These were transactions that would either be with third parties or putting Bangor Punta and Chris-Craft and Piper together?

A Say that again?

Q The Grumann --

A That's a different one.

We also had discussions -- specifically, the ~~Grumann~~ Grumman, one, Herb Seigel and I met with Jack Clifford, Security National Bank, and the president of Grumann, and this was a transaction whereby Grumann would have acquired all of Chris-Craft ~~industries~~ Industries' and Bangor Punta's interest in Piper.

Q I don't want to get into details, but it was not your suggestion that there was anything improper in the efforts that Mr. Siegel was making to try to extricate his company, was there?

A I don't think there was anything improper from his point of view. I do worry that nothing be done by either side that jeopardizes the position of the other because I do regard ourselves as pretty well locked together here.

Q Tell me, Mr. Wallace, what would you be willing to sell 120,000 shares of Piper to Chris-Craft for today?

A I don't think I would be willing to sell 120,000 shares of Chris-Craft. It would not be my decision anyway.

Q Of Piper?

A I would not be willing to sell 120,000 shares of Piper, but that would first be a matter for the board of directors of ~~Piper~~ Bangor and not for me to consider.

Q Is your Piper stock pledged?

A My Piper stock is restricted. I think you could say pledged. That's a good description.

Q Is it fair to say that you are confident that your banks would never let you sell 120,000 shares of your Piper stock to Chris-Craft?

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A It is fair to say that I speak with a very polite tone to my banks, yes.

MR. LIMAN: Your Honor, I would like to have five minutes to see whether there is anything else that I would like to cover with Mr. Wallace.

May I also inquire, your Honor: You mentioned something about scheduling, as to whether there is a problem tomorrow. I know Friday we are excused.

THE COURT: I had hoped that we would be able to clear this matter up by noon time so I could take on some other things that are pressing. There is a tender offer that somebody is all excited about on another case. Then there is a suppression hearing that somebody is very anxious to get heard.

MR. RYAN: We have nothing, your Honor.

THE COURT: I assumed that we might be through today, but, hopefully, by noon tomorrow.

MR. LIMAN: Your Honor, if I have rebuttal witnesses I might be able to trim -- if you took the morning off and if we start at 2 o'clock I would be finished --

THE COURT: I prefer to start at 9 o'clock in the morning.

MR. LIMAN: Is there any way that you could accommodate us? We are operating on this timetable and --

THE COURT: You are not operating on any timetable other than the one you put down. You wanted to go on the 22nd. I put everything else aside. We are here.

MR. LIMAN: I am asking for a continuance, your Honor, to 2 o'clock tomorrow, which would enable me to --

THE COURT: I think it would be better to start at 9 o'clock and be sure to move this case to completion. I think that we ought to be in a position to complete it.

Take your five minutes and we will see what we can do about this.

I would like to ask a question.

Did I understand you to say that Mr. C. Leonard Gordon is a lawyer?

THE WITNESS: He is a practicing lawyer here in New York.

THE COURT: A New York practicing lawyer?

THE WITNESS: Yes, sir.

BY MR. LIMAN:

Q He is with the firm of Shea Gould today?

A Yes.

Q He was formerly vice president and general counsel of Chris-Craft?

A That's my understanding.

THE COURT: We will take a five-minute recess.

(Five-minute recess.)

BY MR. LIMAN:

Q Mr. Wallace, in the fall of 1969 into 1970 was there a problem that delayed the release of the Piper audited financials?

A Yes.

Q That was a problem relating to what the reserve would have to be for the Twin Comanche; am I correct?

A The problem was that the representatives of Chris-Craft on the board of directors disagreed with the reserves that were proposed.

Q Do you recall when it was that Bangor Punta first proposed what the appropriate reserve should be?

A Bangor Punta didn't propose the reserve. As I recollect, the management of Piper and Arthur Young had proposed a reserve in the financial statements for September 30, 1969.

Q Do you recall, sir, that some time in September of 1969 you discovered that there had been a problem in connection with the Twin Comanche? I am using the term "problem" to try to be as neutral as I can.

A I believe that I discovered there were difficulties with the Twin Comanche in late August of 1969.

pgbr 25 Wallace-cross

Q You brought that to the attention of Mr. Gordon?

A I believe that as soon as I learned it I told Mr- Gordon of it, that there was this problem.

Q Is it fair to say that it was a matter of some concern to you?

A Yes. That's a fair statement.

Q Do you recall that Bangor Punta retained an expert to advise it on what kind of retrofit might be necessary?

A Yes.

Q When we talk about the reserve, is it fair to say that the reserve would be influenced by the extent of the retrofit that might be necessary?

A The reserve would be influenced by the cost of the retrofit to each Twin Comanche that was to be retrofitted.

Q You wanted to ascertain through the best professional advice that you could get what the effective retrofit would be and what the cost would be?

A I wanted as much imput from as many sources as I can get on the subject.

MR. LIMAN: I will ask that this be marked as Plaintiff's Exhibit 174.

This is a memorandum from Mr. Fennelly to a Mr. Kornfeld, dated November 25, 1969.

(Plaintiff's Exhibit 174 was marked for identification.)

Q I ask you if this refreshes your recollection that some time before November 25th Bangor Punta retained a safety expert?

A Yes. We had retained a consultant on this subject.

Q Do you have any recollection today when your expert reacned his conclusion as to what the effect of retrofit would be?

A No. I have no independent recollection.

Q Do you recall a discussion of this at meetings of the board of directors of Piper in April of 1970?

A If the record so indicates. I remember many discussions both in and outside board meetings on this subject.

Q Is it fair to say that there came a point in 1970 when through this study by an independent expert Piper concluded that the plane could be retrofitted at a cost for all of the outstanding planes of approximately $250,000?

A There came a point when Piper's engineering staff came up with a retrofit cost which was much ~~higher~~ lower than the retrofit cost they had first indicated, and that's

what I was relying on.

Q What was the retrofit cost they first indicated?

A I don't recall these figures now except that originally it was a higher cost and then it moved lower.

Q At the time they came up with this cost and satisfied you that this would be an appropriate retrofit program, you voted to establish the reserve for the 1969 financials?

A Repeat that.

Q After Piper's management made their recommendation that the less expensive retrofit would be effective, you gave consideration to that recommendation?

A Certainly.

dhbr 1 Wallace-cross

t5/1 pm

Q And it was at that point after you were satisfied with their recommendation that you voted to approve the Piper financials with a reserve?

A I don't recollect the dates on all of this. If you have some way of refreshing my recollection --

Q I did not ask you about the date, but it was after their recommendation had been conveyed and you satisfied yourself that you made your vote to approve the financials.

A I believe that's correct.

Q Would it refresh your recollection if I showed you the minutes of Apirl 20, 1970 and showed you the reference there to Mr. Piper distributing the materials on the proposed retrofit?

A Yes, I recall this.

Q And you recall that it was at or about this date that the Piper management made the recommendation for the lower cost program?

A Yes, I think that is true.

Q You thereafter accepted it and voted for the reserve that would cover that program?

A Yes, I believe that's correct.

Q And Chris-Craft asked for a greater reserve and dissented?

dhbr 2 Wallace-cross

Q And just so that the record is clear, in fact the Twin Comanche has essentially stopped falling from the air?

MR. RYAN: Objection to that question, your Honor.

Q But, in any event, the ~~retrofit~~ retrofit has proven --

THE COURT: Mr. Liman, get near your table. You are making an objection?

MR. RYAN: The question was that since that time the PA-30, the Comanche, stopped falling from the air.

THE COURT: The objection as to form is sustained.

Q The retrofit program has proven effective?

A It's not just the retrofit program, sir.

Q Pardon?

A It was not just due to the retrofitprogram.

Q Other safety programs as well?

A Because the retrofit was only part of the effort. There was an effort to properly placard the airplane, an effort in the airplane's manual, operations manual, instruct ~~people~~ people on certain behavior of that airplane on a single engine stall, and things of thatnature.

Q Mr. Ryan has informed me that you misspoke concerning the carrying charges of your Piper investment.

dhbr 3 Wallace-cross

A My arithmetic was bad.

Q So that the record is clear, it is 2.2 million before taxes and 1.1 after taxes; is that correct?

A Of the correct carrying charges of our Piper investment.

Q You were asked questions. Did Mr. Siegel ever express objection to you to Mr. Stockton as the financial vice president of Piper?

A Yes.

Q Expressed the view that he did not consider him competent?

A Yes.

Q Mr. Stockton is still the financial vice president of Piper?

A I believe so.

Q Do you know so?

A I assume so. He was the last time I looked.

Q In 1970, in or about July of 1970, did Piper halt all of its productions?

A There came a point when Piper ceased production because of lack of business and built up an inventory, and plants were closed until the inventory ran off.

Q Were you consulted about that decision before it was made?

A I believe so.

Q Was any Chris-Craft representative consulted before it was made?

A I believe I did talk to people from Chris-Craft about it.

Q Do you recall that?

A Yes, because I remember that in any time when I thought there was a major change in the business or a major event, I was careful to call people from Chris-Craft.

Q Is it a fact, Mr. Wallace, that you first informed Chris-Craft about that at a board meeting in July of 1970?

A I would doubt that, you know.

MR. LIMAN: Excuse me, your Honor.

Q If I show you the 7/21/70 minutes, which reflect a report of yours, I will ask you whether that in any way refreshes your recollection that you did not advise Chris-Craft before the meeting that the production had been closed.

A That doesn't change my recollection in any way. I talked with members of the board of directors representing Chris-Craft, Herb Siegel, Lenny Gordon in particular, when I thought there was something of moment that I should tell them; that they may not have been aware of in an effort to keep them informed. This doesn't necessarily say I had

not already told them about this.

On the other hand, I would have to refresh my recollection in some way but I think when we first shut these plants we shut them at the time of the vacation period and then extended that closing beyond the vacation period.

So it would normally be shut down at this point, and then would have been continued, but I know that that shut down, when it occurred, the Chris-Craft people were kept informed.

MR. LIMAN: I have no further questions of this witness.

THE COURT: Anything further?

MR. RYAN: I have no further questions.

THE COURT: Thank you. You may step down.

(Witness excused.)

THE COURT: Anything else by the defendants?

MR. RYAN: That is all on the part of the defendants.

Oh, we have exhibits we have to mark in the morning, or we can mark them tonight. No testimony.

THE COURT: What I suggest you do is to put labels on there with the numbers, and then you will read off the numbers that you have numbered the exhibits.

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You do not have to mark them in the courtroom. Just offer them in court after you have numbered them and Mr. Liman can do the same with his exhibits. The clerk will give you the tabs so that you can put them on.

MR. LIMAN: Your Honor, I have for a rebuttal case two witnesses, one of whom is coming from out of town and can be here around the noon hour. The other is a short witness, at least the direct would not be more than a half hour, and I would beg your Honor's indulgence in allowing --

THE COURT: Maybe you would rather go over for a couple of weeks?

MR. LIMAN: I would rather, your Honor, if your Honor could accommodate us to --

THE COURT: This is not a problem of accommodation. This is a matter of where you gave me your own timetable and I set myself accordingly.

When Mr. Ryan said it would be three days, I added on a day for safety sake and set the schedules accordingly. Now you want time off.

MR. LIMAN: No, your Honor. I advised your Honor a week; and secondly, your Honor --

THE COURT: I will not curtail your effort to present as much as you want, whether it is now or at any

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other time. The only thing that I am suggesting is that if you are going to take time to get your proof here, then it will have to accommodate other court problems.

I mean, you are entitled to consideration but not to that priority or preference.

MR. LIMAN: Your Honor, I received, and I am not saying this critically of the other side because all timetables were delayed, the last of their expert's report, Mr. Gant, on Friday. We began on Monday --

THE COURT: I grant you you received those late but I think that you were six or eight weeks late on your own.

MR. LIMAN: I said I know we were, but he --

THE COURT: Yours were the first to come.

MR. LIMAN: I am not speaking critically. I am saying that between Friday and today, which is Wednesday, we have both completed our cases in chief.

THE COURT: Mr. Liman, the thing to do would be not to advise me that you have other cases in your office. I accept that.

MR. LIMAN: I did not say that, your Honor.

THE COURT: Well, you said that you had not received them and that you had not delivered them. Now, for a variety of reasons you did not keep to the

schedule that we made up last year.

I am not faulting you for that and I want to give you plenty of time. Your problem now is a different one than you foresaw, because things did not come when they should have come and this case is not going to be decided on any pressure as far as you are concerned. I would like to know now what you can do to complete your presentation some time not later than noon of tomorrow, and then to go over to another time when you can take more time so that you are not in a hurry.

MR. LIMAN: I will try, your Honor, to complete the case by noon tomorrow. I will have at least one of my witnesses here and I am going to make every effort to get the second one here.

THE COURT: I want to assure you that if you cannot complete by noon tomorrow you will be given a further and ample opportunity of any duration and extent that you need and enough time to complete this.

MR. LIMAN: Your Honor, suppose that my two witnesses take beyond noon tomorrow, even if I get them here?

THE COURT: We are now at twenty minutes to six. You mean it is twenty minutes to six tomorrow?

MR. LIMAN: No, I mean suppose it goes to 2:30?

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THE COURT: I am not fussing about that. I want to be in a position to handle some criminal case priorities and an injunction matter that has come along that was assigned to me that was not handled completely in Part I where I have to give them a few moments of time.

MR. LIMAN: Fine, your Honor.

THE COURT: So that I am not holding you to noon. Knowing the propensity of examinations, when I say noon I am allowing mentally for two hours past noon.

MR. LIMAN: Can we start at 10 tomorrow, your Honor?

THE COURT: Any time that you say. I could start at 9 if you are ready.

MR. LIMAN: I really need until 10.

THE COURT: 10 o'clock.

Is that all right with the other side?

MR. RYAN: That is fine.

THE COURT: Will you have anything further after Mr. Liman gets through?

MR. RYAN: I cannot imagine, your Honor, having anything further.

THE COURT: I will say the same thing to you. If you find yourself crowded tomorrow in the afternoon at a time when we call the shutdown for this phase of it,

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I want you to understand that if there is anything that will help me see what the facts are and determine the issues, I want you to take the time at another time and present it.

MR. RYAN: Yes, sir.

THE COURT: This is a non-jury case and there is no special point in proceeding as we would in a jury case.

MR. RYAN: Thank you, your Honor.

THE COURT: Both sides are to be given a full and fair and ample opportunity, and when you are through I do not want anybody to say that they would have said something else if they had time to do it, because I am going to give you time.

MR. ARNING: Your Honor, I may be absent tomorrow morning, but I will leave my proxy with my colleagues, Mr. Sullivan and Mr. Urowsky.

THE COURT: That is the way we do it in criminal cases, too.

All right.

I will see you tomorrow morning at 10 o'clock.

Before we rise, if your out-of-town witness is not here, will that gap the period in the morning? I am only thinking of my scheduling time, that is all.

MR. LIMAN: No, your Honor. I am not going

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to leave you -- because I do not think that would be fair -- that I will make sure that I can go either consecutively or that we will have to put him on at some other point.

THE COURT: If you are not going to go continually, I will take something in between. That is why I am asking.

If you are going to go on continually, I will bring them in after you are through.

MR. LIMAN: I would prefer, I could be absolutely certain, if you could take something in between.

THE COURT: The minute I take something in between, you know, some lawyer will tell me it is ten minutes and it will take three hours.

MR. LIMAN: I would hold my witness, lock him in the witness room so he cannot leave.

THE COURT: All right.

We will start at 10 o'clock and assume we are going on continuously.

(Adjourned to Thursday, April 25, 1974, at 10:00 a.m.)

dhbr

Cnris-Craft Industries, Inc.

v.

69 Civ. 2227

Piper Aircraft Corp., et al., etc.

New York, New York
April 25, 1974
10:00 a.m.

- - -

(Trial resumed.)

- - -

MR. LIMAN: May we proceed?

THE COURT: Yes.

MR. LIMAN: Steven J. Ross.

S T E V E N J. R O S S, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Ross, you will have to keep your voice up so that everybody can hear you. Okay?

A All right.

Q Your age?

A I'm forty-six years old.

Q Your occupation?

A I'm chief executive officer and chairman of the board of Warner Communication.

Q Is Warner Communication a corporation listed on the New York Stock Exchange?

A Yes, it is.

Q Could you just give us a brief description of its assets, sales and income?

A It has sales in excess of a half a billion dollars. It earns, after tax, in excess of $50 million, and it has a net equity in excess of $300 million.

Q How long have you been an officer of Warner?

A Since it was founded.

Q When?

A In 1961.

Q Were you one of the founders?

A Yes, I was one of the founders of Warner, which was previously known as Kinney Service Corporation.

Q Have you had experience in the acquisition of other corporations?

A Many. I've acquired many companies through the years for WCI.

Q Could you give us a brief description of the depth of your experience and acquisitions?

A I've acquired a rent-a-car business, funeral

business, limousine businesses, parking businesses, table companies, talent agencies, movie companies, record companies, publishing and distribution businesses, painting businesses, floors and ceiling, dry wall, plumbing businesses, and real estate.

Q Have you taught any courses in acquisitions?

A Yes, I have. I have taught at YPO, which is the Young Presidents Organization. I headed seminars on acquisitions and mergers.

Q For how long a period have you taught acquisitions at the Young President's Organization?

A Over the last six, seven years.

Q Do you know Mr. Salgo?

A Yes, I do. Mr. Salgo is the dean of acquisitions at YPO and considered that, in my opinion, throughout the country.

Q And you have taught courses with him?

A I've been in his course when he was giving the course, and I've been on YPO conferences with him.

Q Have you, in the course of the many acquisitions that you have participated in, paid premiums for control?

A Yes.

Q And --

A You always pay premiums for the control situation.

Q You talked about premium. Can we define what you mean by premium?

A What I mean by premium is an amount over and above the market value, the present market value at that time.

Q In your opinion, does control have value that justifies premiums?

MR. RYAN: Objection, your Honor. The man is being qualified as an expert witness. His name was not furnished to us, nor was his report furnished to us, as required by the pretrial agreement we had concerning expert witnesses.

THE COURT: I will give you a continuance so that you can look into this gentleman's background and qualifications and his activities, and take the matter up from there.

I think that you are entitled under the arrangement, I believe it was, to a report from every expert in January of this year, if my memory serves me correctly. Not having gotten it, I am not going to delay the proceedings. If Mr. Liman thinks that this is useful for a better understanding of the case on my part, I am very happy to take it, but you will be given an appropriate continuance.

MR. RYAN: Thank you.

Q Mr. Ross, when were you first asked to testify?

A Last Friday.

Q Were you at that time furnished with the Goldman, Sachs report?

A Yes, I was.

Q Have you rendered any written report?

A I'm sorry, I didn't hear.

Q Have you rendered any written report?

A No, I have made several notes to myself in reviewing the Goldman, Sachs report, and that's all I've got.

Q Mr. Ross, in your opinion does control have values that justify the payment of premiums?

A Of course.

Q Would you describe what those values, that control affords, are?

A It gives you -- one of the most important values of control, it gives you the ability to select management and management directs the operation. It gives you the ability to eventually merge the cash flow with the company, which gives you the availability of cash flow, which is very important. It gives you the availability to dictate long-term policy and do long-term planning.

In essence, it gives you control of your own destiny. It's very important.

Q In your opinion, do control positions have liquidity that otherwise is not available in large investments?

A Control is a liquid investment. A minority block is not a liquid investment. You can sell a control positionvery readily, where you cannot sell a large block minority position at all.

MR. ARNING: Your Honor, I do not think the gentleman has qualified as a security specialist on any basis. I would move to strike the last answer.

THE COURT: I will take it for what it is worth, bearing in mind the qualifications that have been stated, and we will see what comes out.

Q Mr. Ross, have your experiences in acquiring control of enterprises been taken into account in your expression of opinion to the Court about the fact that control has value?

A That's correct.

Q Have you also taken into account the experiences of others who have engaged in acquisitions?

A That's correct.

Q Has your history of acquisitions been described recently in a Fortune Magazine article?

A Yes.

Q Have you been described there as a consummate deal maker?

A Yes.

Q Have I asked you to look at the Goldman, Sachs report?

A Yes.

Q And I asked you to read the decision of the Second Circuit; am I correct?

A That's correct.

Q Did I ask you to analyze the type of circumstances on the assumption that Chris-Craft held approximately 40.5 per cent of Piper stock and Bangor Punta held approximately 30.6 per cent of Piper stock?

A That's correct, you did.

Q Have I also asked you to analyze that situation on the assumption that Chris-Craft held approximately 42% of Piper stock and Bangor-Punta held approximately 37%?

A That's correct.

Q In your opinion, in those circumstances, either the roughly 41 to 31% lead or the 42 to 37% lead, would the Chris-Craft block have premium value?

A Yes, it would.

Q Why?

A Because the ball game is over for all intents and purposes. The lead is, in my opinion, insurmountable when you're in the 40% area. When one company has 40% and has a lead of 4 to 5% in that area, they have effectively won.

Q Have you made an analysis of the situation the way in which you would analyze the circumstances in the matter in which you, as head of your company, were interested?

A Yes, I did the following analytical work on this situation: --

Q When you say you did the following analytical work, this is analytical work that you personally did since Friday?

A That I personally did.

Q You wrote it out by hand?

A I have it in front of me. I wrote it out by hand, and I believe you have a Xerox or a typewritten copy of the same that I have in front of me.

This is the way I would view the situation:

Taking different amounts of stock that ultimately would be tendered or voted, and assuming on the top line that 95% of the the stock would ultimately -- the total amount of outstanding would ultimately be tendered or voted I said in the first instance that Chris-Craft owned 41% -- I rounded the 40.6 to 41 -- and I said Bangor Punta owned the 31 -- I rounded the 30.6 there to 31. The shares remaining under that situation to be acquired if the total amount to be acquired would only be 95%, because the other 5 didn't vote or tender, was then 23%. The amount or the percentage needed of that 23% by Bangor Punta would have been 19/23 or 82.6% of the balance of the stock, and I say the ball game is over on that.

Q You used the figure that 95% would be tendered for this assumption. Why didn't you start on the assumption that 100% of the stock could either be bought or voted?

A I certainly don't know many situations where 100% are tendered or voted, and I used a situation from 95 to 100 even if the unusual were to happen, most unusual, the one in a million, where 100% voted or ~~attended~~ tendered. I think

using a 95 to 100% category I'm using an unusually high situation.

Q Would you continue with your analysis.

A As a matter of fact -- well, yes. If you were to do the 42-37, you find a very, very similar situation in essence where Bangor Punta would need 81.3% of the outstanding shares to gain control. Not much difference between 81.3 and 82.6, so both are in the same category as far as I am concerned, as far as their ability to gain control.

I think that I don't have it down on this piece of paper, but, for instance, if you were to go back and say only 90% of the total outstanding voted, and you would then deducted the 72%, that Bangor and Chris-Craft has, that would leave 18% -- that would make it impossible, mathematically impossible, for Bangor to gain control. And the same would go under the 42-37 if only 90% tendered ~~attended~~. So you can go back there and do quite a bit of math.

Q If you go up to the 100% line, skipping the interim ones, the intermediate ones?

A You would find that on the 100% [illegible] if everyone voted and everyone tendered ~~attended~~, Bangor Punta would still need 67.9% under the 41-31 concept in order to control the company, and under the 42-37% concept, they'd need 61.9%.

Q If you were interested in acquiring control of the company, would you be willing to buy at a premium a 41% block where there was an opposing shareholder that had a 31% block outstanding?

A Yes, I would, based on the math I just did; no doubt about it. And based on another computation I did, also.

I would buy either the 41-31 or the 42-37. So I would buy the 41 block in the 41-31. I would buy the 42 block in the 42-37. I wouldn't touch the 37 block in the 42-37 with a 10-foot pole. That would be suicide. I wouldn't touch the 31 block with a 10-foot pole. That would also be suicide.

I think that if you were to go, for instance, to the 42-37 situation and you were to say the following: That what Chris-Craft needed in the 42-37 situation is 125,000 shares to gain control. There is no way that they are not, in my opinion, going to get control, because for every $10 they would step up their offer price, which would be a very wise thing to do to make sure you get control, for every $10 they step up that price, it only averages to $1.52 on the average amount of shares that they are paying extra. So that if --

Q Would you explain that, elaborate on that for the

Court?

A I'm trying to make it less complicated and I apologize.

For instance --

THE COURT: Tell me, also, whether you are talking about money or funny money.

THE WITNESS: Money, real money, green stuff. Real; real money.

Q You have used "green stuff" in acquisitions; am I correct?

A Pardon me?

Q You have used "green stuff" in acquisitions?

A Yes, I have used a lot of things in acquisitions. I'm talking about hard additional cash.

If you were -- you start on the following assumption: That at the 42-37 situation, the average cost per share to commercial credit -- I'm sorry -- to Chris-Craft -- CC I have -- is $64 per share.

Q You are reading from a piece of paper?

A I'm reading from a piece of paper and I apologize.

Q Your handwritten notes? These are handwritten notes?

A Yes, they're not in good form.

Q They're notes that you brought in this morning

when you came to see me?

A Yes.

MR. LIMAN: Your Honor, do you want to follow? [Handing.]

THE WITNESS: And they're not in specific order, your Honor. I started down in the middle where I said that 44,628,000 was for the 697,495 shares, which equals $64 a share, and that's the basic cost of Chris-Craft.

A If they were then to tender for the additional -- for an additional 125,000 shares, which would give them control -- and the way I got to that is, I said there were 1,644,890 shares outstanding, the total outstanding, needed for 50% was 822,445 shares. The amount of shares that Chris-Craft owned under the 42-37 is 697,495 shares, and the difference being 124,950 needed for 50%. So I rounded that to 125,000 shares needed.

I then said that if they wanted to tender at $80 a share for those 125,000 shares, that would bring the cost to -- the average cost of all their shares owned to $66.42. If they wanted to tender for the additional 125,000 shares, at $90 a share, it would raise -- ~~$1.52~~ 1.52 on the average -- it would raise that price to the total purchase price of $67.94. If they wanted to tender at $100 a share, it would raise once again another $1.52 in the average cost

per share to $69.46.

Q Mr. Ross --

A So that what I am saying, and this -- all these raises, I think, would be appropriate to do to gain control, because if they don't have control, they're in very serious trouble.

Q Mr. Ross, in expressing the opinions, have you considered the fact that Bangor Punta had an opposing block here?

A Yes.

Q And you have considered the fact that Bangor Punta had financing?

A Yes.

Q And you have considered the fact that the Piper management was aligned with Piper?

A Yes.

Q Have you bought companies in which you were not buying management?

A Yes. I bought Warner Brothers -- when we acquired Warner Brothers, we replaced 19 out of the top 21 executives.

Q Have you considered the fact that there was cumulative voting ?

A Yes, I have considered that.

Q If you were in Chris-Craft's position after the

exchange offers closed, the contest stood at approximately 45% to Bangor Punta and 41% for Chris-Craft, what would you do if you were Chris-Craft?

A Following the same statement I made before, when there's a 4% lead, 4 to 5% lead --

MR. RYAN: Objection, if your Honor please. Is this man being offered on management decisions or on values?

THE COURT: I do not know what he is being offered on. But I will take his testimony and you will have an ample opportunity for sufficient duration or continuance to look into the entire record and read it at your leisure and prepare yourself for a proper cross-examination.

Would you read the question back, please?

[Question read.]

A I would drop out. That is not different than what I said earlier. When you're --

THE COURT: What do you mean by you would drop out?

THE WITNESS: I would not invest another dime at that particular moment, because --

THE COURT: If you were Chris-Craft, what would you do, put the stock in the vault and forget about the whole thing?

THE WITNESS: No, I would try to figure some way out of my dilemma, because I have a very serious problem.

THE COURT: What would the way be out of your dilemma?

THE WITNESS: To try and ascertain if there is any possible way of selling this to someone, someplace, somewhere realizing my money back.

THE COURT: At what price would you sell?

THE WITNESS: Well, I'd want to receive, if I could -- I would want to receive what I had in.

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THE COURT: From your background of experience, and knowing these figures --

THE WITNESS: I wouldn't get much.

THE COURT: -- what would you get?

THE WITNESS: I'd get a tremendous discount from what is in.

THE COURT: What amount? You have talked about $64 a share for your cost. What would you get?

THE WITNESS: Right.

Well, I'm stymied, your Honor, on that point, because the point that has me stymied --

THE COURT: Is that outside of your general competence?

THE WITNESS: No, I don't think so.

THE COURT: Have you ever gone to an investment banker with a request to distribute the minority position?

THE WITNESS: Yes, we did. One of our subsidiaries did an underwriting and we've done it.

THE COURT: A minority position?

THE WITNESS: Some underwritings. A minority position.

THE COURT: What kind of a discount did you take for your subsidiary on the bare value?

THE WITNESS: If I may suggest, your Honor,

I don't think that's the situation that exists here right now.

THE COURT: Have you got anything comparable in mind where you have ever had any experience in distributing a minority position?

THE WITNESS: Not where another bidder for the stock was attempting to gain control of the stock. I've had no experience in that situation, trying to dispose of a minority block when someone else is trying to buy it in, and the reason it becomes complex, your Honor, in my mind, is that certainly there's no one that would pick up the block in that situation, because that's suicide. I mean, he'd be inheriting your very serious problem in this situation.

The other possibility is, therefore, to have an underwriting. There would be very serious questions in my mind about that underwriting.

THE COURT: You mean as a seller or as an underwriter?

THE WITNESS: As a buyer of the shares to be issued. If I were looking at a prospectus and I were going to buy shares, if someone attempted an underwriting in that situation, I would seriously concern myself with: why isn't Bangor Punta buying the shares; therefore, if

not, whether it's paper or cash or whatever, there's a very good possibility that the value isn't there; that Bangor Punta, who is now in control, doesn't see the value in these particular shares.

And I think that is a very difficult obstacle to overcome, and now I'm talking as a buyer of a hundred shares or a thousand shares or whatever that may be. I would think that becomes a very serious problem.

The second problem that exists, if someone is going to put in cash on the underwriting, the buyer of these shares, then since Bangor at that particular moment would have control, they then are somewhat at the mercy of Bangor in that sense.

THE COURT: Isn't every minority stockholder of your corporations at your mercy?

THE WITNESS: Only if I'm in the sense going to merge them out through some way and we haven't been in this situation.

THE COURT: You have minority stockholders, don't you?

THE WITNESS: Yes, very many.

THE COURT: That trade your stocks all the time on a minority basis?

THE WITNESS: That's correct, your Honor.

THE COURT: And you are in dominant control of all your enterprises?

THE WITNESS: Yes, that's correct, your Honor.

THE COURT: They still trade them, don't they?

THE WITNESS: Yes, they still trade them, but this is not like the situation, in my ~~line~~ mind, that we are discussing. We're discussing a situation right now where Bangor, in the minds of everyone, and I'm sure everyone, they would assume that Bangor is eventually going to go for the rest of the block in -- for the rest of the outstanding in Piper.

So here they're going to -- under an underwriting, a buyer will pay some cash and then maybe be merged out, frozen out, at a later date or an earlier date, whatever -- they're at the total mercy of a fellow coming into a picture that just controlled a company. That's a different set of circumstances besides just a normal underwriting.

THE COURT: Let me ask you, as a matter of experience in your various activities, when you have bought a minority position, have you then proceeded to buy up the balance of the outstanding stock?

THE WITNESS: In my experience, I have not bought a minority position.

THE COURT: I said, when you have bougnt a majority position, nave you then proceeded to buy up the entire

minority to get a hundred per cent of the company?

THE WITNESS: Yes.

THE COURT: What company was that?

THE WITNESS: Most of the companies of the acquisitions that I've got.

THE COURT: And you bought the balance of the stock?

THE WITNESS: Yes.

THE COURT: So that you bought in a hundred per cent of the stock?

THE WITNESS: That's correct.

THE COURT: What happens to the premium that you pay when you own a hundred per cent of the stock?

THE WITNESS: After you own a hundred per cent of the stock, then you have the ability to reap the rewards as far as obtaining a hundred per cent of the cash flow, the earnings, the P&L and everything else.

THE COURT: So that you are back to fair value at the time you own a hundred per cent of the stock; isn't that right?

THE WITNESS: Well, you're back to the value that you prescribe to a particular situation at that time.

THE COURT: But you are back to fair value of a hundred per cent of the stock?

THE WITNESS: Yes, you're back to fair value, that's correct.

THE COURT: So that if you have paid up a premium to acquire less than a hundred per cent of the stock, you have lost money in the acquisition; isn't that right?

THE WITNESS: No. If you paid for premium what you're -- if I may suggest, that doesn't follow, sir.

If you paid a premium, you're paying the premium over a stipulated market value. I mean, the then given market value. That's the concept of, let's say, premium. For the purposes of this discussion, at least, that's what I assume it is.

That has -- that market value may be totally irrelevant to what you believe that company is worth, so that just because you're willing to pay a premium and then you've gotten to a hundred per cent, that doesn't mean you have over paid for anything at all.

As a matter of fact, it's very conceivable that you underpaid. And I think, if I may suggest, if we take the Warner Bros. acquisition that we made, we paid a substantial premium and it was contested. There was another bidder out there. We paid a substantial premium over the market price. I think it's one of the best acquisitions we've ever made, because in the four,

four and a half years that we earned it -- that we've owned it, I'm sorry, we've taken out of Warner Brothers our investment in cash, in actual cash, via the dividend route and we own a hundred per cent of it.

So that in no way, shape or form does owning a hundred per cent depreciate a value. It's the value which each individual puts on the company, because they can put in management, they can either add management, they can eliminate management, they can cut overhead, they can give it the true direction that they believe a company should follow, a true course that they should follow, they can do all the necessary planning, they can institute a dividend policy or not institute a dividend policy. These are some very important aspects.

THE COURT: I did not intend to interrupt to that extent.

THE WITNESS: I'm sorry. I didn't intend to become long-winded, either. I'm sorry.

Q Mr. Ross, would you say that the value of control involves an element of subjective judgment?

A Yes. Of course.

Q And that the party buying control, in your case, makes a judgment as to what the control is worth?

A 100% so.

Q And somebody else looking at the same situation --

A May give a different value.

Q When you were looking at the value of control, you are not looking at what the company is at the moment but what you can do with that control?

A That's 100% correct.

Q When you said to his Honor that you have taken all of this money out of Warner, does that mean that was in Warner when you took Warner, or was that money that was earned?

A In the year we acquired Warner Brothers, which is, oddly enough, 1969, the total Warner Brothers Company earned $10,000,000 approximately, after taxes. Twelve and a half million dollars after taxes was earned by its recording division. Consequently, the movie company had lost money in the year that we acquired it.

Last year, December 31, 1973, last year alone, we earned in excess of $40,000,000 after taxes just out of

Warner Brothers. That's through our management, through our developing the business on our ground rules.

Q Mr. Ross, have you bought companies where the multiple that you were paying was substantially higher than your own multiple?

A Yes. My last two acquisitions resulted in diluted earnings on a per share basis. We paid a higher multiple for their company than our multiple was selling at.

THE COURT: What was that?

THE WITNESS: Two cable companies -- really three that we bought, Continental Cable, Cypress Cable, and T.V. Cable.

I don't have the exact figure in my mind, but I would say in the approximate area their multiple was twice ours.

Q To what extent does the relationship between the multiple of the acquiring company and the acquired company relevant when the acquisition is being made substantially for cash?

A There is no relevancy in the two multiples.

Q Why is that?

A First of all, the only time -- the most important time for relevancy of a multiple -- when you measure one multiple against the multiple of another company, the only

time that would have an impact of any kind is if you did a pooling. Then you would have, if you were buying a higher multiple company, immediate dilution on the earnings per share. If you are doing an acquisition, that should have nothing to do with your multiple whatsoever. You are buying a business because you believe in the business; you want to make it prosperous; you hope to help it to prosper, and you are going to build it, and those earnings will innure to your company. It has nothing to do with multiples.

Q In your looking at acquisitions, if you are paying cash and can't do a pooling, as a result you have to write off against your earnings the excess purchase price?

A The good will, yes, excess over net assets.

MR. LIMAN: I have no further questions.

MR. RYAN: May we have a few minutes, your Honor?

THE COURT: Yes.

[Pause.]

MR. RYAN: We will try to proceed, your Honor, but we may find that we may have to ask for a brief extension of time, inasmuch as we would not be able to complete the cross-examination.

THE COURT: You are entitled to that at your option.